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NATIVE HAWAIIANS STUDY COMMISSION

HEARINGS

BEFORE THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON THE

REPORT OF THE NATIVE HAWAIIANS STUDY COMMISSION

HONOLULU, HI, APRIL 16, 1984
CAPTAIN COOK, HI, APRIL 17, 1984
WAILUKI, HI, APRIL 18, 1984
LIHUE, HI, APRIL 20, 1984

PART 1

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NATIVE HAWAIIANS STUDY COMMISSION

MONDAY, APRIL 16, 1984

U.S. Senate,
Committee on Energy and Natural Resources,
Honolulu, HI.

The committee met, pursuant to notice, at 10:30 a.m., in the Hawaii State Capitol Auditorium, Hon. Spark M. Matsunaga, presiding.

Present: Senators Matsunaga and Inouye, and Representatives Heftel and Akaka.

Also present: James P. Beirne, counsel; Becky Barbour and Nora Melnick, staff assistants.

OPENING STATEMENT OF HON. SPARK M. MATSUNAGA, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator **Matsunaga**. The committee will please come to order. We will now commence the first of four hearings to be held throughout the State, and as has been announced earlier, we'll proceed from here to Kona, then to Maui, and then to Kauai. Then we'll have held the hearings in every county.

As acting chairman of the committee, I am honored and privileged to have the distinguished senior Senator of Hawaii, the Honorable Daniel K. Inouye, and the one and only native Hawaiian Member of the U.S. Congress, the Honorable Daniel K. Akaka, sitting with me here as honorary members, pro tempore, of the Senate Committee on Energy and Natural Resources.

At the outset, I wish to thank you, Papuna Lahela Mahuii, for the most inspiring invocation, and for the wonderful and beautiful ceremony which the organizations represented here in the front row put on at the foot of the statue of King Kamehameha and Queen Liliuokalani. It was most beautiful. I just returned from Washington last night, and as some of you may know, I wasn't quite expected to return at one time. But I was knocking up at the Pearly Gates, and when St. Peter answered the knock, he asked me, "What's your name?" I told him, and he said, "How do you spell the last name?" He couldn't spell my last name. So I spelled it and he said, "Well, your name is not on the list here." I said, "Well, you mean after living such an honest and straight life I have to go to the other place?" He said, "Well, let me check further." And he checked and came back and said, "You're a little too early. You haven't earned your fare to enter this place." I said "Well, what do you mean?" He said, "Well, you must go back and pass the Native Hawaiian Claims Act."

We're so pleased, of course, to have you.

We'll begin this morning by calling upon the honorary members of the committee to give the opening statement. But just to set the tone for the hearing, I would like to give a brief history of the events that led to this hearing.

On December 4, 1980, just 25 minutes before the 96th U.S. Congress adjourned sine die, the Senate unanimously adopted a 40-page amendment to establish the Native Hawaiians Study Commission, which I offered with the cosponsorship of Senator Inouye to a 1-page House-passed bill, providing for the establishment of the Kalaupapa National Historic Park. And the Subcommittee on Territories of the House Interior Committee, under the then-chairmanship of the late Congressman Philip Burton of California, immediately adopted the Senate amendment before Congress adjourned. And it became Public Law 96-565. It was signed by President Jimmy Carter on December 22, 1980.

The amendment had a long and interesting legislative history, dating back to 1974, when at the request of the Aloha Association, of which some of you are members, came to Washington. It was called the Aloha Association, the acronym for the Aboriginal Land Owners of Hawaii Association. At their urging, I introduced in the House a bill providing for the direct settlement of native Hawaiian claims. My bill, which was then cosponsored by then-Congresswoman Patsy Mink, who will be testifying today, was reintroduced in 1975 and hearings were held on the bill during the 94th Congress by the House Committee on Interior and Insular Affairs. Those hearings, which were held in Hawaii, were well attended and helped to focus the attention of Congress on the facts surrounding the overthrow of the Hawaiian monarchy in 1893, and the seizure of lands belonging to the crown and the Hawaiian people. In addition, the hearings raised further questions about whether or not compensation should be provided; in what form such compensation should be; how it should be distributed; and the definition of native Hawaiian.

Because of these valid questions, the U.S. Senate adopted a different approach. In December 1975, Senator Inouye introduced Senate Joint Resolution 155, which sought congressional acknowledgement of the wrongs done to native Hawaiians. It also called for the establishment of a Hawaiian Native Claims Settlement Study Commission with a broad mandate to conduct a comprehensive study of the questions relating to native Hawaiian claims.

Senate Joint Resolution 155 was referred to the Senate Interior Committee, now the Energy and Natural Resources Committee, of which I am a member, and after due consideration, it was favorably reported, late in the 94th Congress, near the end of 1976.

In 1977, when I took my seat in the Senate, Senator Inouye and I introduced Senate Joint Resolution 4, providing for a study of Hawaiian native claims. A similar measure, House Joint Resolution 526, was introduced by Congressman Akaka and Congressman Heftel, who has just joined us.

Welcome back, Cec. You and I came pretty close to cutting down the Hawaiian delegation 50 percent.

A similar measure was introduced, as I said, in the House by Congressman Akaka and Congressman Heftel. And the Inouye-Matsunaga bill passed the Senate unanimously in October 1977, but it failed in the House and was recommitted for further consideration to the House Interior Committee. During the remainder of the 95th Congress, the four members of the Hawaii congressional delegation worked hard to convince Members of the House who opposed the legislation to support it. The amendment adopted in 1980 was the result of these joint efforts and was a compromise. The resolution's strong preamble, acknowledging the U.S. role in the overthrow of the Hawaiian monarchy, was deleted and the Commission was limited to nine members, only three of whom could be residents of the State of Hawaii. In addition, the Commission's mandate was broadened to include a study of the culture, needs, and concerns of native Hawaiians.

A nine-member study commission was appointed by President Carter, but summarily was dismissed and replaced by President Reagan with his own appointees. This new Commission held its first meeting in September 1981. As required by law, it filed its report, including its findings and recommendations, in June 1983. Under the provisions of Public Law 96-565, the U.S. Senate Committee on Energy and Natural Resources and the U.S. House of Representatives Committee on Interior and Insular Affairs have jurisdiction over the report of the Native Hawaiians Study Commission, and it is the responsibility of these two committees to review the report and to recommend to the Congress what action should be taken with respect to the Commission's findings and recommendations. These hearings today are the first step in the process which we hope will result in the introduction of legislation addressing the Commission's findings.

Although a unanimous report was desired by all nine members of the Native Hawaiian Study Commission, substantial disagreement arose over the Commission's methodology and its analysis of the facts surrounding the overthrow of the Kingdom of Hawaii, the consequences of the so-called revolution of 1893, and land tenure in Hawaii prior to the overthrow of the Hawaiian monarchy. Citing fatal flaws in the Commission's report of the majority, the 3 Hawaiian members of the Commission, Kina'u Kamali'i, who served as chairman, Roger Betts, and Winona Beamer, filed a supplemental report with 14 additional recommendations. While the majority of the Commissioners found that native Hawaiians were in need of specific types of Federal assistance and recommended increased aid for education, employment opportunities, and health, they found the U.S. Government blameless in connection with the overthrow of the Hawaiian monarchy. And further, found no legal basis for Federal action to redress the historic claims of Hawaiians stemming from the events of 1893.

The Commission's minority recommended that: (1) that Congress pass a joint resolution acknowledging the role and actions of the United States in the overthrow of the Kingdom of Hawaii, and indicating a congressional commitment to grant restitution for the losses suffered by native Hawaiians; (2) that the U.S. Senate Energy and Natural Resources Committee and the U.S. House Committee on Interior and Insular Affairs determine a just and equitable resolution of compensable claims by native Hawaiians; (3) that these committees consult and involve native Hawaiians to the greatest extent possible in the resolution of these claims, and that any proposed restitution be subject to formal acceptance by native Hawaiians; (4) that pending resolution of these claims, Congress take appropriate action to assure that all lands controlled by the Federal Government in the State of Hawaii maintain current use and status, and that the archipelagic waters of Hawaii enjoy the same security; (5) that the Congress establish a Joint Federal-State Ceded Lands Commission for the State of Hawaii to review the present status, use, and possible release of federally controlled ceded lands in Hawaii; (6) that this Commission advise the Congress on the status of the federally controlled ceded lands in Hawaii, and have the authority to declare such lands surplus and available for return to the State of Hawaii; (7) that native Hawaiians be included and consulted in the course of the Commission's review; (8) that Congress, by joint resolution, indicate its commitment to review the implementation of the recommendations of the Federal-State Task Force on the Hawaiians Homes Commission Act; (9) that Congress take appropriate action in the event that its review finds that compliance by the State of Hawaii and the U.S. Department of the Interior has not occurred; (10) that Congress enact legislation granting beneficiaries of the Hawaiian homes trust the right to seek judicial review and resolution of abridgement of the trust; (11) that native Hawaiians be included in all native American programs; (12) that a Federal-State study be conducted to assess the needs of native Hawaiians; (13) that consideration be given to the establishment of special native Hawaiian programs at the Federal level; and (14) that the Congress adopt a single definition of "native Hawaiian to mean any individual who ancestors were the natives of the area which constituted the Hawaiian Islands prior to 1778, and that proper guarantees to protect the rights and privileges of those now holding or awaiting a Hawaiian homes award accompany this change.

The three Hawaiian commissioners concluded, on the basis of their study, that while the situation of native Hawaiians is unique and not exactly like that of other native Americans, native Hawaiians have a moral basis for compensable claims in the loss of land rights and interests vested in the domain and dominion of the Kingdom of Hawaii, and that these so-called claims of conscience should be addressed by Congress.

Our witnesses today have been asked to comment on this finding, and on the recommendations of the Commission minority; to address the alleged errors in fact contained in the majority report with respect to the overthrow of the Hawaiian monarchy and its consequences; and in general, to limit their comments to the major differences between the majority and minority reports of the Commission. The testimony of these witnesses will help the Committee on Energy and Natural Resources to decide whether or not to adopt the minority's recommendations. As one who has worked hard for the last 10 years to resolve the complex issues surrounding the native Hawaiian claims, I'm looking forward to hearing the scheduled witnesses.

Enthusiasm is shown by the fact that more than 60 witnesses have requested to testify today; and in order to give every one of them a chance to testify, each speaker will be limited to 5 minutes. As chairman of the committee, I urge all witnesses to try to summarize their statements as briefly and succinctly as possible. But your full statement will appear in the hearing record, and will be made available for reading by all the members of the committee.

I have, you notice, a red and green light here, and a buzzer, which will go off when your time has expired.

But before I call upon the first witness, I wish to call on the members of the committee here to make the opening statements. Senator Inouye first.

STATEMENT OF HON. DANIEL K. INOUYE, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator INOUYE. Mr. Chairman, I thank you very much for this privilege and opportunity to join you in this historic hearing to receive testimony evidence and documentation to prove and demonstrate beyond any doubt that the findings and conclusions set forth in volume I were not based on fact; that it demonstrated grave distortion and interpretation of history; and that it lacked the sensitivity necessary if one is to understand the Hawaiians and their culture.

I'd like to tell all of you that there is one person that deserves extra commendation for the work that has been done by this Commission, and that's Kina'u Kamili'i. During her tenure as chairperson of this Commission, as many of you know, she has been criticized, maligned, and very seldom given the proper recognition for the great work she has done.

The hearings demonstrate part of the work she has done. I support her in her findings. I support her in her conclusions. And I hope that these hearings will demonstrate that volume I is not worthy of consideration by the U.S. Senate.

I thank you very much.

Senator MATSUNAGA. Thank you very much. We will now hear from Congressman Heftel.

STATEMENT OF HON. CECIL HEFTEL, A U.S. REPRESENTATIVE FROM THE STATE OF HAWAII

Mr. HEFTEL. Thank you very much, Mr. Chairman. It's very good to be here among the living. Spark and I will give you an affidavit of performance, if you want one.

I would like, Mr. Chairman, to have my remarks in total placed in the record. And then in recognition of time, summarize for us as briefly as I can.

Senator MATSUNAGA. Your statement will appear in the record.

Mr. HEFTEL. I don't think too often I've been referred to as an echo, but I would like to make an echo at this point in relation to Senator Inouye's remarks about Kina'u Kamili'i as her work as Chairman of the Commission. She does deserve credit for the outstanding job that she did in the overwhelming odds against which she was working. I think that is what I would like to share with you.

Namely, the observation that at the time she was appointed by President Reagan, it was very disheartening to realize that the Commission is going to be composed of three members from Hawaii and six members, who would be primarily what I termed "midlevel political appointees" who would not have the freedom of the intellectual pursuits, who would not have freedom to express the facts as they found them to be. But rather would have been given preconceived concepts which they were to deliver in their findings. And unfortunately, that is what they did. You could not have studied the facts and come out with their conclusions. You could not dismiss the manner in which the Hawaiian Islands were overtaken. You could not dismiss the participation of the American troops in doing it. And simply understand the native Hawaiians were deprived of their land in a manner which was not lawful and which requires retribution at this time.

Well, it's been a long hard battle, and Spark and Inouye preceded me many years fighting this battle. Danny and I inherited it in 1977. It's a very difficult one. But it's one that must be pursued and fought. We can't simply ever give up because we have setbacks along the way. There will be another Presidential election this year, and who knows what that will bring, hopefully, Senator Inouye.

But obviously, it would be nice to have the ear and the voice in tune between Presidency and Senator Inouye again. And I think we could all, as a Nation and a State, benefit from that.

So, Mr. Chairman, I want to congratulate you on holding these hearings. I think it's critically important. I think it's significant this place is overflowing. I think it's important for all of you to know that your participation is so very important. And ultimately you will find that we will prevail, and it will take all that time and patience that is so very hard to exercise. Which I, by the way, have learned to exercise in the last year.

Mahalo.

[The prepared statement of Mr. Heftel follows:]

OPENING STATEMENT
BY
CONGRESSMAN CEC HEFTEL
BEFORE THE
U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
APRIL 16, 1984

Good morning, Mr. Chairman and members of the Committee. I am pleased to present testimony on this issue of great importance to the people of Hawaii.

Four years ago Congress established the Native Hawaiians Study Commission. The commission was directed to spend eighteen months studying the culture, needs and concerns of the Hawaiian people and to report its findings to Congress. All nine members of the commission were appointed by the President. Three of the members were from Hawaii. The other six, all political appointees in the Reagan Administration, had no background in diplomatic history, international law, ethnic studies, or Hawaiian affairs, and furthermore had no interest in Hawaii's people. This disinterest became painfully apparent and resulted in irresponsible and biased work.

In examining the broad historical context of American and foreign affairs in the latter half of the nineteenth century, it is clear that the larger nations of the world were heavily involved in expansionist activities in the Pacific, and U.S. intentions to annex Hawaii were well known. However, there is no understanding or acknowledgement of the role of the U.S. government in the overthrow of the monarchy in the commission's report. This crucial point cannot be ignored if we are to have meaningful discussion about the impact of U.S. actions on the Hawaiian people. It is apparent, upon reviewing the bibliography in the report, that primary source material was scarcely used in compiling the facts upon which the commission based its conclusions. It appears to me there was an attempt to obscure the facts. Therefore, I reject the report's conclusions and recommendations.

Mr. Chairman, it is clear to me that portions of the report must be redone. To define the American role in the overthrow requires honest scholarship. I intend to pursue this point next month in a hearing to be held by the House Interior Committee on the adequacy of the historical sections of the report.

Thank you, Mr. Chairman, for allowing me to participate in this hearing.

Senator MATSUNAGA. Thank you, Congressman Heftel. Now, we'll turn to the one and only native Hawaiian of the U.S. Congress, Congressman Daniel Akaka.

STATEMENT OF HON. DANIEL K. AKAKA, A U.S. REPRESENTATIVE FROM THE STATE OF HAWAII

Mr. AKAKA. Thank you very much, Senator Matsunaga. Chairman of the delegation, and Hawaiians at heart, Aloha. I am delighted and honored to be here today with my colleagues and Senators. I want to join with our senior Senator in his remarks about Kina'u Kamali'i, who has been a champion in this effort.

Today, we are here to discuss an issue that will be a step in the direction toward completing what we set out to do; to show that native Hawaiians have a moral basis for compensable claims in the loss of land rights and interests vested in the domain and dominion of the Kingdom of Hawaii. Our chief objective today should be to stress the inconsistencies of the majority report, of the Native Hawaiians Study Commission, volume I, and to emphasize the points of rebuttal of the minority report, volume II.

The inclusion of the minority report, volume II, used in legislation relating to the culture, needs, and concerns of native Hawaiians in essential, as it insures an impartial analysis of the causes of the fall of the monarchy, the subsequent annexation, of the Kingdom of Hawaii, and other major faults of the financial report of the majority.

The principle inconsistencies of the Commission's report concern historical accounts of the U.S. involvement in the 1893 overthrow of the Hawaiian monarchy. Primarily, there are three areas which we need to discuss. The first concerns references. The second is the Blount and Morgan reports, and the third is the international atmosphere around 1893. The historical inaccuracies of the report laid the foundation for the conclusions and recommendations made by the Commission. Legal analysis based on the performance of the United States in the overthrow is therefore inappropriately determined.

In view of the specific points which I have found to be insufficiently addressed, there is evidence that the Commission's conclusions are incorrect. For it is only through the use of accurate information that a right and justifiable decision can be formed. The issue that we are dealing with today is one which I take very seriously. The question of whether a wrong had been committed by the United States against the native Hawaiian people requires fundamental attention. Logically, appropriate actions to remedy such actions should follow suit.

I respectfully urge the committee to regard the minority report, volume II, as an important rebuttal to the findings of the Commission's final report, volume I. Through the introduction of volume II, I am certain that significant and positive legislation can be objectively determined.

Mahalo a nui loa. Thank you very much.

[The prepared statement of Mr. Akaka follows:]

DANIEL K. AKAKA
SECOND DISTRICT, HAWAII

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CONGRESSMAN DANIEL K. AKAKA
OPENING STATEMENT: SENATE HEARINGS ON THE NATIVE
HAWAIIANS STUDY COMMISSION REPORT
APRIL 16, 1984

Thank you very much. I am both pleased and honored to be here with you today. I deeply appreciate the opportunity to participate in the Senate Energy and Natural Resources Committee hearings on the Report of the Native Hawaiians Study Commission.

I want to take this opportunity to commend Senator Spark Matsunaga for taking the time to chair these hearings. Furthermore, I would like to praise the other members of the Energy and Natural Resources Committee who have chosen to participate in the hearings. I extol you for your sensitivity to the problem of Hawaii's Native Hawaiians.

The issue of providing an accurate, detailed and unbiased account of the Native Hawaiian culture, needs and concerns to Congress is an important one here in Honolulu.

On the island of Oahu alone there are roughly 123,000 Native Hawaiians, the equivalent of approximately 70.4 percent of the entire statewide Native Hawaiian population.[1] Hence, it is fitting that we begin these hearings amidst such a large group of people who serve to be influenced by the outcome of the Commission's report.

Although the details of the issue which we are discussing are quite complicated, the issue itself is a very simple one: Does the Report of the Native Hawaiians Study Commission accurately reflect and review the history of the United States with Hawaii? In addition, does the report render an impartial analysis of the causes of the fall of the monarchy and annexation?

The answers to these questions are vital insofar as the impact of the report on the Native Hawaiian community is monumental. I believe that to allow the Final Report of the Commission to be introduced in its current form is to refuse to identify and question major faults in its contents and conclusions.

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[1] Source: U.S. Department of Labor, Assistant Secretary for Policy, Evaluation, and Research (March 30, 1982). (As compiled in the Native Hawaiians Study Commission Report)

Our chief objective today should be to stress the inconsistencies of the Final Report, and to emphasize the Minority Report's points of rebuttal. The inclusion of the Minority Report views in legislation relating to the culture, needs and concerns of Native Hawaiians is essential, as it ensures an impartial analysis of the causes of the fall of the monarchy, annexation, and the other major faults of the Final Report.

The principle inconsistencies of the Commission's report concern historical accounts of the United States' involvement in the 1893 overthrow of the Hawaiian monarchy. Primarily, the following points summarize my views on those areas which demand clarification:

1) References

The references cited in the 2nd Chapter of Part II, "Diplomatic and Congressional History: From Monarchy to Statehood", do not reflect adequate use of first-hand accounts. Rather, the Commission chose to rely on the three volume work of Ralph Kuykendall, The Hawaiian Kingdom, as a primary source of information.

2) The Blount and Morgan Reports

The lack of emphasis placed on the conclusions of the two reports in terms of the involvement of American representatives and forces in the overthrow of the Hawaiian Kingdom reflects the Commission's denial of what are otherwise extremely significant documents.

3) The International Atmosphere

The dimensions of the actual international situation before and around the time of the overthrow are mistakenly overlooked in the Final Report. The intensity of the rivalries in the Pacific by various nations, such as France and England, is ignored as a contributing factor to the interest of the United States towards the Hawaiian Kingdom.

The historical inaccuracies of the Report lay the foundation for the conclusions and recommendations made by the Commission. Legal analyses based on the involvement of the United States in the overthrow, and thus its culpability is therefore inappropriately determined.

In view of the specific points which I have found to be insufficiently addressed, it is evident that the Commission's conclusions are incorrect. For, it is only through the use of accurate information that a right and justifiable decision can be formed.

Before we can even address the inadequacies of the final determinations made by the Commission we must clarify the errors in their methods of research and documentation by which they arrived at their decisions. Once this has been achieved, I believe that we can anticipate clear and objective results.

The Report concludes that sovereignty is not a right in determining compensation to the Native Hawaiians. This conclusion is not correct, and demands reconsideration. Through the introduction of additional information, as well as the clarification of deficient studies, I believe that we will be able to address the issue of reparations.

The issue that we are dealing with today is one which I take very seriously. The question of whether a wrong had been committed by the United States against the

Native Hawaiian people requires fundamental attention. Logically, the appropriate actions to remedy such actions should follow suit. I respectfully urge the Committee to regard the Minority Report as an important element in illuminating the inexactitudes of the Commission's Final Report. Through the introduction of this report, I am certain that significant and positive legislation can be objectively determined.

Senator **Matsunaga**. Thank you, Congressman Akaka. Your statement will appear in full in the committee record.

Our first witness representing himself, the official position of the State of Hawaii, and that of the Governor, is also a native Hawaiian. The Honorable John Waihee.

STATEMENT OF JOHN WAIHEE, LIEUTENANT GOVERNOR, STATE OF HAWAII

Mr. **Waihee**. Aloha, Mr. Chairman Matsunaga, Senator Inouye, Congressman Heftel, and Congressman Akaka. Thank you very much for the opportunity to appear before you today; and on behalf of Governor Ariyoshi and the people of Hawaii, I want to extend our warmest welcome.

The Governor has asked me to convey to you his deepest concerns with the inaccurate accounting of Hawaii's history contained in volume I, the majority report of the Native Hawaiians Study Commission. He and I firmly believe that portions of volume I, especially the conclusions relating to the U.S. participation in the overthrow of the legitimate Hawaii government, as well as the trust relationship between the Federal Government and the Hawaiian people, must be refuted. Accordingly, we want to commend your committee for taking the time to come to Hawaii to get the facts straight.

Also, we want to express our special appreciation to our Hawaii delegation pursuing the scheduling of these Senate committee hearings here in Hawaii and for the House committee hearings scheduled on May 3 in Washington, DC.

During the course of this day and throughout the statewide hearings, you will receive testimony on specific sections and portions of volumes I and II of the Commission's report. I believe that you will find on the whole that there is consensus within Hawaii's community that volume II, the minority report, constitues a constructive dessent to the inaccurancies of volume I. Indeed, the thrust of this consensus is contained within the resolutions that have been adopted by many civic orgainzations, the county councils, and which are currently moving through the State legislature.

As stated in volume II by Hawaii's three members of the Commission, volume I is, in many portions, fatally flawed in fact and spirit. Because the contents of volume I would otherwise form a basis for congressional action, its formal rejection is imperative.

As all of us who live here know, the history and destiny of American and of Hawaii are uniquely intertwined. The bias displayed in volume I does this history no service, and indeed impedes the proper fulfillment of our shared destiny.

So, we humbly request that volume I be placed back on the shelf and the record corrected. And with the correction of that record, come a formal apology for the wrong that has been done.

Along with so many others, I truly believe that the left of these precious islands is perpetuated in righteousness. Yet I must confess that I have a hard time getting my children to fully appreciate this, our State motto, while explaining to them the events leading up to and after the overthrow of Queen Liliuokalani.

Thus, as a Hawaiian, I believe we are honor bound to seek justice in this matter and to restore and reaffirm righteousness to these islands. It is a matter of honor.

As an American, I believe in the highest ideals of this Nation. We stand for freedom and justice for all. As Americans, we are honor bound to remove this smear on our past. We must restore righteousness to this country. It is, again, a matter of national honor.

Now, what must be done so that righteousness may be restored to the Hawaiian people and honor to the Nation?

There must be an admission of wrongdoing by the National Government and a vindication of our Queen by acknowledging that her cause was just. We call this an apology.

Thus, what we are really talking about here is vindication and vindication alone.

However, like it or not, in this society, in a legal sense, an apology, even a sincere one, is meaningless and even laughable unless it is accompanies by some form of payment or restitution.

If you do not understand what I am talking about, the next time you receive a ticket, try going to traffic court and sincerely apologizing. Or, if you are unlucky enough to be involved in a traffic accident or fail to live up to a contract, and so on, apologize and see what happens.

Likewise, when a major corporation is involoved in price fixing, or someone is caught committing a crime, is the Government merely content to accept an apology? Of course not. Fines must be paid and sometimes jail sentences served.

So, what about the illegal overthrow of the Hawaiian Kingdom and the acts which followed? Should we permit less? Do we accept as vindication in this case a new remedy; that is, merely a statement of wrongdoing? Would that not just compound the indignities already suffered?

So, you see, compensation is not the issue. Honor is. Restitution is only important because it makes an apology meaningful. Without it, the apology would be empty, a fraud.

In closing, we are fortunate to have you, our Hawaii congressional delegation, to guide us at this critical juncture. With your guidance, let us move ahead toward the fulfillment of the shared destiny of this special island State and our great country. Let us restore righteousness to our land. It is a matter of honor.

Senator **Matsunaga**. Thank you very much, Lt. Gov. John Waihee, for your most excellent testimony.

Because of the time limitation, we will not raise any questions at this point, since we'd like to listen to all of the witnesses who have registered to testify.

Our next witness is the speaker of the house of the State legislature, Hon. Henry Peters, another good native Hawaiian. Mr. Speaker? Oh, I guess he must be upstairs still in session. So we'll come back to him when he arrives.

Then our next witness would be the Honorable Peter Apo, of the house of representatives.

STATEMENT OF PETER K. APO, MEMBER, HAWAII STATE LEGISLATURE

Mr. Apo. Thank you, Mr. Chairman. Just found out the other day I have presbyopia, so this is my first day with glasses. It's amazing. They open a whole new world for me.

Aloha kakahiaka. Senator Matsunaga, members of the committee, ladies and gentleman, I wish to begin by thanking the U.S. Senate and this committee for holding hearings this week in Hawaii. For many of us, this will be the only opportunity to personally express to Members of the U.S. Congress our views and concerns on the issues raised in the native Hawaiians report.

My name is Peter Apo and I'm a native Hawaiian by any of the definitions currently in use. It was my good fortune to be an elected member of the Fir Board of Trustees of the State of Hawaii's Office of Hawaiian Affairs, and presently I am a member of the State house of representatives. The 49th district, which I represent, spans two islands and has the largest population of native Hawaiians of any of the State's 51 representative districts.

Mr. Chairman, I have serious doubts, major questions, and many reservations about numerous findings, conclusions, and recommendations expressed in the report. However, my central concern is the issue of whether or not native Hawaiians have justifiable grounds for a compensable claim against the United States for reparations or restitution as a result of loss of doman and dominion due, in whole or in essential part, to the actions of the U.S. Government. I will limit my testimony to this issue.

As the subject of native Hawaiians' compensable claims has been explored in recent years, there has been a growing tendency to make a distinction between, on one hand, legal bases for such claims, and on the other hand, bases rooted in the ethics and concepts of justice which have become an inseparable part of our commonly shared national heritage. In some respects, I believe this distinction is forced and arbitrary, and therefore lacking in merit. When I look at the American legal system and the products that flow from that system, whether in the form of statutes or judicial decisions, it seems clear to me that ethics and concepts of justice are a necessary and substantial part of the shaping and reshaping of American law. If ethics and justice are viewed from a systems perspective, it becomes clear that they share many of the characteristics of a legal system. My point here is that while the satisfactorily resolution of the issue of native Hawaiians' claims against the United States will have to take legal form through congressional action and decisions of the Federal judiciary, such action and decisions must inevitably be based, in substantial part, on our commonly shared understandings of ethics and justice.

Discussions of the legal bases for native Hawaiians' claims generally are carried on in the context of existing Federal laws, as found in congressional statutes and Federal court decisions which deal with native American Indians or Alaskan Natives. A strict application of this existing body of law to the situation of the native Hawaiians leads the members of the Native Hawaiian Study Commission, in both volume I and the dissenting volume II, to the conclusion that native Hawaiians' claims do not satisfy the existing legal conditions to establish compensability on the part of the United States.

Since the appearance of the Commission's report, I have discussed the legal aspects of the native Hawaiians' claims with several authorities, including some attorneys, some who agreed with the commission majority, and some who agree with the minority. These discussions have led me to some conclusions and, with the understanding that I am not an attorney, I should like to share some of these conclusions with you.

To begin with, arguing within the existing body of law based on the U.S. relationships with native American Indians and Native Alaskans may largely be a legal exercise with little direct relevance to the unique characteristics of the native Hawaiians' claims. Perhaps the most important lesson to be learned by an examination of the existing body of law and the historical background behind that law is the simple fact that the U.S. Government, through Congress and the courts, has found it necessary to treat native American Indians' claims and Native Alaskans' claims in different ways tailored to meet the unique elements of each group's claims. In both cases, Congress found it necessary to pass legislation allowing each group to pursue its claims. Federal court decisions similarly reflect an awareness of the unique aspects of the claims of each group.

The claims of the native Hawaiians should not be treated within the body of law that has evolved to deal with native American Indians and Native Alaskans. Native Hawaiians deserve separate attention from Congress, and eventually, from the Federal judiciary which recognizes that the claims of native Hawaiians should be evaluated within the unique historical and legal background of native Hawaiians. If new law has to be made by Congress and the Federal courts to do justice to Hawaiians' claims, then so be it. I, for one, am firmly convinced that on the grounds of ethics and justice, native Hawaiians have at least as substantial a claim as the native American Indians, Native Alaskans, and recently Japanese-Americans incarcerated in World War II.

A second conclusion I have reached is that the study of possible legal bases justifying native Hawaiians' claims is incomplete. Further study might yield defensible legal arguments in support of the claims. Whether such further study should be undertaken is a high-priority question deserving consideration.

I also conclude that American law is remarkably flexible, changing over time to accommodate the fluctuating requirements of our constantly evolving society. Many legal changes are more the result of the application of commonly accepted concepts of ethics and justice than the application of existing law. Examples include: one, the school desegregation cases; two, the protection of the rights of individuals subject to the criminal justice system; three, the reapportionment cases, and the prayer in school cases. In addition, it has been repeatedly pointed out to me that the Indian Claims Commission Act of 1946 and the Alaska Native Claims Settlement Act fit into this category.

Developing bases supporting native Hawaiians' claims based on grounds of ethics or concepts of justice requires a careful determination of the relevant historical facts and sound analyses and sensitive interpretations of these facts, which I think we all agree did not occur in volume I. This is obviously a demanding task requiring specialized training and talents. It is a task that is not yet completed. I believe it must be done to ensure a fair and adequate hearing to native Hawaiians.

The work done to date on the claims of native Hawaiians seems incomplete and unsatisfactory to me on several important matters. In support of this conclusion, let me quickly raise a few of the many questions which I feel have not been satisfactorily addressed:

One, what exactly was the nature of sovereignty as exercised by the rulers of Hawaii? How did it change over time? What would have been likely future changes at the time sovereignty ended?

Two, what were the respective rights and responsibilities of ruled and ruler under the Hawaiian Kingdom? What moral and ethical implications existed in the relationships between ruler and the ruled?

Three, based on answers to questions such as the above, what were the rights and responsibilities of ruler and ruled in relation to land in Hawaii; and more specifically, in relation to crown and government lands?

Four, from the arrival and settlement of American citizens in Hawaii until 1893, did the real or implied powers of the United States help shape the history of the native Hawaiians, their sovereign ruler, and their sovereign nation? If so, how? What were the consequences for the continuance of Hawaiian dominion and the maintenance of Hawaiian domain?

Five, would the termination of Hawaiian sovereignty in 1893 have been possible without the intervention of the United States and legal representatives of the United States?

Ultimately, I believe the resolution of the claims of the native Hawaiians will be a matter of conscience—that is to say—a determination of the rights and wrongs of the actions and motives of the United States in its relationships with native Hawaiians.

I would like to close my testimony by reiterating the theme of justice. In spite of the turn of history and the loss of our sovereignty, I think it is safe to say that the vast majority of the Hawaiian people are proud to be citizens of this great country. I think that we all believe in the founding principles of this Nation, and that in fact these principles are still practiced. I think that because we are Americans we desperately cling to a fading vision that justice will be done.

I don't think it would be too dramatic to point out that in times of national crisis, the Hawaiian Native American has risen to call. The blood of our fathers and sons also stain the battlefields of Europe and the Pacific in the Great War. Our women also grieved the loss or injury of their men in the mountains of Korea and the jungles of Vietnam. And so it is sad that while we have willingly helped to carry this Nation's heaviest burdens to preserve the Repulic, we have not been able to share in the full benefit of her blessings.

Our case is simple. We seek the justice and fair play we were taught in school, and asked to teach our children. I do not envy you your task, for at this point in time you carry the hopes and dreams of an entire people. I have no doubt that the Congress will find eventually that our cause is just.

As a postscript, I would like to add currently in the House—in the legislature—we are processing a resolution that will formally put the legislature on record as rejecting some major sections of the volume I report.

Thank you very much for your attention.

Senator **Matsunaga**. Thank you very much, Representative Apo, for your most poignant remarks.

Our next witness is a former Member of the U.S. House of Representatives. She was also a cosponsor of the initial bill which was introduced in the House, as I stated in my opening remarks. We'll be happy now to hear from the chairperson of the city and county of Honolulu, Chairperson Patsy Mink.

STATEMENT OF PATSY T. MINK, CHAIR, HONOLULU CITY COUNCIL

Mrs. **Mink**. Thank you very much, Honorable Senator Spark Matsunaga, and members of the Hawaii delegation. I'm pleased today to make this appearance as the chair of the Honolulu City Council.

On Wednesday, April 11, the Honolulu City Council's Governmental Relations Committee passed Resolution No. 84-100, urging this committee and the U.S. House Interior and Insular Affairs Committee to formally reject certain enumerated sections of the final report as contained in volume I of the Native Hawaiians Study Commission. Let me read you the significant portions from the resolution.

A Resolution respectfully urging the United States Senate Committee on Energy and Natural Resources and the Committee on Energy and Natural Resources and the Committee on Interior and Insular Affairs of the United States House to formally reject enumerated sections of the Final Report of the Native Hawaiians Study Commission, Volume I.

Whereas, the Council of the City and County of Honolulu has a deep and abiding commitment to the enhancement and protection of the rights and interests of all its citizens; and

Whereas, this commitment can and appropriately should extend to an examination of governmental documents and studies which impact on the well-being of our community and their needs; and

Whereas, the Final Report, dated June 23, 1983, of the Native Hawaiians Study Commission, a Congressionally-mandated inquiry to "study the culture, needs, and concerns of Native Hawaiians" to provide guidance on possible federal responses in identified areas affecting the rights and interests of our citizens; and

Whereas, Volume I of this Final Report contains many errors and inaccuracies which are specifically reflected in Volume II, and

Whereas, unless these errors and inaccuracies are refuted and formally rejected, it will do harm and injustice to the people of the State of Hawaii; and

Whereas, Volume II offered specific point by point refutation in the following areas: (1) Approach and Methodology, pages 1.8; (2) Conclusions and Recommendations, pages 21-32; (3) Ancient History to Reciprocity, pages 147-172; (4) Land Laws and Land Relationships, pages 251-264; (5) Diplomatic and Congressional History: From Monarchy to Statehood, pages 265-332; (6) Existing Law, Native Hawaiians, and Compensation, pages 333-370; and (7) Review of Hawaiian Homes Commission Programs, pages 371-418.

Whereas, the Council of the City and County of Honolulu shares the concerns raised in Volume II of this report and notes that Volume I contains a fundamental misinterpretation of the history of Hawaii, misapplies American Indian Law to the Native Hawaiian experience, forces legal analyses which jeopardizes the whole body of claims and settlement precedents and thereby denies justice to the Hawaiian people; and

Whereas, such errors and their use as the basis for findings, conclusions, and recommendations to the Congress of the United States of America must not be permitted to stand unchallenged and uncorrected in national records and as the source for possible future determinations of fact or action by the national government; and

Now therefore, be it resolved by the Council of the City and County of Honolulu that is respectfully urges the United States Senate Committee and the Committee of the U.S. House to formally reject those portions of the Final Report of the Native Hawaiians Study Commission, volume I, enumerated in the body of this document.

This resolution, Mr. Chairman, is to be adopted by the city council formally at its meeting this week or Wednesday, I can safety predict. As a spokesperson for the city council, the resolution, I think, very carefully sets forth our sentiments and our full commitment and support to Kina'u Kamali'i's brilliant leadership in the formulation of all the critical comments in her volume II.

Let me just depart somewhat from my formal statement and ask that you incorporate it in full, however, in the minutes of this deliberation. And simply express some comments of my own, personally, since this will probably be my one and only opportunity to reflect these comments as an individual.

It seems to me that while we may want to discuss this issue in terms of a matter of conscience, that as anyone who has followed this issue and who has studied the background of what occurred in 1893, it is my firm commitment that not only is it a matter of conscience for the citizens of this country to reflect upon, it is a matter of legal obligation on the part of the U.S. Government.

I would not be personally satisifed as one citizen of this State if the Congress of the United States laid the foundation for whatever recompense, reparations, or restitutions that is made to the native Hawaiians on the basis of a moral obligation, because the historic record is so clear, so clear beyond of a shadow of a doubt, that it was the intervention of the U.S. forces that made the overthrow of the Kingdom of Hawaii in 1893. And on the basis of that fact alone, it seems to me, carried to clearly in the James Blount report that the citizens, natives of this Hawaii have not only a right of conscience, but a legal claim which must be recognized and paid by the Congress of the United States and by the Federal Government.

It seems to me also that one of the penetrating inquiries that the Congress must make is on the annexation of Hawaii in 1898, why this act done by joint-resolution and not by the consent of the people of Hawaii?

If just on those two points both committees would dwell, and look to the historic justification of both of these incidents, I'm sure there will be not one single doubt that the claims of the native Hawaiians are not only a matter of conscience, but a matter of legal requirement.

Thank you.

[The prepared statement of Mrs. Mink follows:]

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813 / TELEPHONE 523-4000

PATSY T. MINK
CHAIR

Testimony by Patsy T. Mink
Chair, Honolulu City Council
To the Senate Committee on Energy & Natural Resources
Supporting Volume II, Native Hawaiians Study Commission
April 16, 1984, Monday, 10:00 a.m.
State Capitol, Auditorium

The Honorable Senator Spark Matsunaga and Members:

Aloha.

My name is Patsy T. Mink, Chair of the Honolulu City Council.

On Wednesday, April 11th the Honolulu City Council's Governmental Relations Committee passed Resolution No. 84-100, urging this committee and the U.S. House Interior and Insular Affairs Committee to formally reject certain enumerated sections of the final report as contained in Volume I of the Native Hawaiians Study Commission.

The full City Council will be voting on this resolution at its meeting on Wednesday, April 18th.

The specific sections as stipulated in City Council Resolution No. 84-100 do not accurately interpret the critical events and subsequent actions by the U.S. government. This badly colors the conclusions and recommendations affecting the claim of the Native Hawaiians.

I therefore urge this committee to make a thorough examination of the specific government documents and other reports which depict the actual events leading up to the annexation of Hawaii as called for in our resolution.

The historic record regarding Hawaii before and events leading up to 1893 needs to be accurately understood; because it is this record which provides the source and basis for corrective actions being sought by the Hawaiian people.

I believe that the U.S. government has a moral and legal obligation to do all it can to insure that the Native Hawaiians rights are recognized to the fullest extent possible.

While the Native Hawaiians Study Commission, Volume II, is being reexamined, I feel that there should be an immediate establishment of a joint federal-state ceded lands committee to report to the Congress on steps being taken to release all unneeded federally controlled lands ceded to them at the time of Statehood but subject to return.

Mr. Chair, the dissenting report as contained in Volume II of the Native Hawaiians Study Commission requires our support and as it point out, until the facts are more accurately established as to the events leading up to 1893 and 1898, there can be no just conclusion for the Native Hawaiians.

Thank you for taking the time to hear our concerns.

#

RESOLUTION

A RESOLUTION RESPECTFULLY URGING THE UNITED STATES SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES AND THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS OF THE UNITED STATES HOUSE TO FORMALLY REJECT ENUMERATED SECTIONS OF THE FINAL REPORT OF THE NATIVE HAWAIIANS STUDY COMMISSION, VOLUME I.

WHEREAS, the Council of the City and County of Honolulu has a deep and abiding commitment to the enhancement and protection of the rights and interests of all its citizens; and

WHEREAS, this commitment can and, appropriately should extend to an examination of other governmental documents and studies which impact on the well-being of our community and to their needs; and

WHEREAS, the Final Report, dated June 23, 1983 of the Native Hawaiians Study Commission, a Congressionally-mandated inquiry (P.L. 96-565. "Title III") to "study the culture, needs and concerns of Native Hawaiians" to provide guidance on possible federal responses in identified areas affecting the rights and interests of our citizens; and

WHEREAS, Volume I of this Final Report contains many errors and inaccuracies which are specifically reflected in Volume II; and

WHEREAS, unless these errors and inaccuracies are refuted and formally rejected it will do harm and injustice to the people of the State of Hawai'i, and

WHEREAS, Volume II offered specific point by point refutation in the following areas:

(1) "Approach and Methodology," pages 1-8;

(2) "Conclusions and Recommendations," pages 21-32;

(3) "Ancient History to Reciprocity," pages 147-172;

(4) "Land Laws and Land Relationships," pages 251-264;

(5) "Diplomatic and Congressional History: From Monarchy to Statehood," pages 265-332;

(6) "Existing Law, Native Hawaiians, and Compensation," pages 333-370; and

(7) "Review of Hawaiian Homes Commission Programs," pages 371-418.

RESOLUTION

WHEREAS, the Council of the City and County of Honolulu shares the concerns raised in Volume II of this report and notes that Volume I contains a fundamental misinterpretation of the history of Hawai'i, misapplies American Indian Law to the Native Hawaiian experience, forces legal analyses which jeopardizes the whole body of claims and settlement precedents and thereby denies justice to the Hawaiian people; and

WHEREAS, such errors and their use as the basis for findings, conclusions, and recommendations to the Congress of the United States of America must not be permitted to stand unchallenged and uncorrected in national records and as the source for possible future determinations of fact or action by the national government; and

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF HONOLULU that it respectfully urges the United States Senate Committee on Energy and Natural Resources and the Committee on Interior and Insular Affairs of the United States House to formally reject those portions of the Final Report of the Native Hawaiians Study Commission, Volume I, enumerated in the body of this document, including the entirety of the conclusions and recommendations included in that volume; and

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF HONOLULU that certified copies of this Resolution be transmitted to Senator James McClure, Chairperson of the Committee on Energy and Natural Resources; Congressman Morris K. Udall, Chairperson of the Committee on Interior and Insular Affairs; Senators Spark M. Matsunaga and Daniel K. Inouye, Congressmen Cecil Heftel and Daniel Akaka, Native Hawaiians Study Commission Chairperson Kina'u Boyd Kamali'i; Office of Hawaiian Affairs Board of Trustees Chairperson Joseph Kealoha, and to the news media of Honolulu.

INTRODUCED BY:

Patsy T. Mink

COUNCILMEMBERS

Date of Introduction:

MAR 23 1984

Honolulu, Hawaii

(CA/rmp 3/23/84)

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

I hereby certify that the foregoing RESOLUTION was adopted by the COUNCIL of the City and County of Honolulu, by the vote and on the date indicated on the right margin hereof.

ATTEST

RAYMOND K PUA
CITY CLERK

PATSY T MINK
CHAIR & PRESIDING OFFICER

Dated ____________

ADOPTED
MEETING HELD

	AYE	NO	A/E
AKAHANE			
BORNHORST			
DOG			
FAWCETT			
KAHANU			
MATSUMOTO			
NARVAES			
PACARRO			
MINK			

Reference

Report No.

Resolution No.

84-100

Senator **Matsunaga**. Thank you, Chairperson Mink, for your most moving remarks.

Now, we'll hear from that person who is largely responsible for our being here today—one who had the courage to go against the majority report of the Commission which she herself chaired. It's very seldom that you find the chairpersons going against the Commission that person chairs. And I think she deserves a lot of credit for the position she has taken.

The former chairperson of the Native Hawaiians Study Commission, Mrs. Kina'u Kamali'i.

STATEMENT OF KINA'U BOYD KAMALI'I, CHAIRPERSON, NATIVE HAWAIIANS STUDY COMMISSION

Mrs. **Kamali'i**. Thank you very much. I thank Senator Matsunaga, Senator Inouye, Congressmen Heftel and Akaka for their very kind remarks. I'm most appreciative. And to Ma ahui, Kaumanu, and all of the societies, Hawaiian civic clubs, and all of you who are here this morning, Mahalo.

Before I begin the formal part of my presentation, I would like to thank you, Senator Matsunaga, for your efforts in assuring these hearings. Your presence here, and see how—I'm so nervous with all of this I even forgot to have the leis presented to you, our Hawaii delegation.

Before I go any further, I, too, want to thank a few people who were extremely important in the following, too. Nona Beamer will not testify today. She will be testifying tomorrow in Kona, and H. Rodger Betts will be testifying on Maui. But I do want to thank my staff here, Linda Dominu, who is our chief of research, and executive director of Hawaii, Ellionu Randall, who is my secretary and has done such a fabulous job.

Your presence here, Senator Matsunaga, and the full committee assures the people of Hawaii that their concerns will be heard in Washington. The presentations made this morning will become finally a part of the formal record of the U.S. Senate.

Recognizing that our testimony will be read and reviewed by your colleagues in Washington, allow me to briefly provide some background on myself. I was appointed the chairperson of the Native Hawaiians Study Commission by President Reagan in September 1981. At that time, I was the minority leader of the Hawaii State House of Representatives, and was first elected to that body in 1974.

I have held a number of important positions within the State Republican Party of Hawaii, including serving as national committeewoman from 1971 to 1975; attending every national convention from 1968 through 1980; and had the honor of seconding the nomination of President Reagan in both 1976 and 1980. These political credentials are critical to understanding why what I have to say next is both significant and personally difficult.

Although it is impossible for me, or anyone else, to ever prove another's motive, it will be my purpose today to demonstrate that the findings, conclusions and recommendations of volume I of the Commission's final report are so profoundly flawed and manipulated that the result can only be called dishonest.

Further, if as I believe happened, the six Commissioners who endorsed that volume in its entirety did so out of a sense of political expediency and so-called loyalty, then I must use even stronger language to describe their actions. It was nothing less than immoral. I believe they sacrificed historical accuracy, analytical judgment, and personal integrity to the end of rejecting any basis for native Hawaiian claims or standing before the Congress and Government of the United States.

I believe that politics is an honorable profession. But it remains so only when issues of conscience and concern are addressed with honesty, openness, and courage. Volume I lacks that conviction.

Thus, I am joining with those who have spoken earlier in urging you and the U.S. Committee on Energy and Natural Resources to formally reject the bulk of volume I of the final report of the Native Hawaiians Study Commission.

It would be irresponsible to make that recommendation of rejection without a detailed and substantiated presentation of the specific flaws and failings of that volume I.

Thus, a number of experts have been invited to specifically address certain deficiencies in volume I, and to share their research and conclusions with this committee. These areas are the same ones which were focused on in the dissenting position offered by myself, Commissioner Nona Beamer, and Commissioner H. Rodger Betts in our votes against these sections in volume I and the preparation of volume II, entitled "Claims of Conscience."

Their testimony will detail, clarify, and further expand the findings, conclusions, and recommendations contained in volume II of the final report.

These experts are as follows: Dr. Pauline Nawahineokala'i King, associate professor of history at the University of Hawaii at Manoa; Mr. David Getches, a former director of the Native Hawaiian Rights Fund, and current director of the Colorado State Department of Natural Resources; Marion Kelly, an associate anthropologist at the Bishop Museum; Melody McKenzie, the executive director of the Native Hawaiian Legal Corp.; Cecelia Chang, a second-year law student at the William S. Richardson School of Law at the University of Hawaii; Prof. John Van Dyke of the William S. Richardson School of Law, and the East-West Center; Davianna McGregor-Alegado, instructor in the Ethnic Studies Program at the University of Hawaii, Manoa; and Mrs. Frency DeSoto, former chairperson of the office of Hawaiian Affairs Board of Trustees and current director of the Wai'anae Satellite city hall.go 833

Additional witnesses, Mr. Chairman, will testify throughout these hearings in many of these same areas, particularly at the least scheduled hearing on Kauai. For the record, I would like very much to insert interviews with Dr. Lawrence Suits and Dr. Cavin Daws, which I will give to the committee staff.

Senator MATSUNAGA. Without objections, they'll be included in the record.

[The material follows:]

The Maui News /Special Report

Hawaiians lack political muscle, page A3

Did U.S. overthrow monarchy? Yes, says noted historian

(EDITOR'S NOTE: This is the last of a three-part series which examines the Native Hawaiians Study Commission on reparations for the 1893 overthrow of the monarchy. In the following interview, staff writer Gary Kubota talks with Harvard Ph.D. Lawrence Fuchs. On page A3, another article discusses Hawaiians' lack of "power base" in government and society.)

By GARY KUBOTA
Staff Writer

IT SEEMS ONLY natural that a discussion about native Hawaiians and the reparations issue include Dr. Lawrence H. Fuchs, well-known and respected by the academic community for his work, "Hawaii Pono: A Social History."

Recently, his book was revised and released in paperback.

Dr. Fuchs has written several social histories, many focusing on the plight of ethnic minorities, including Jews and blacks.

Between 1979 and 1981, he served as the executive director of the U.S. Select Commission on Immigration and Refugee Policy, mandated by Congress to suggest legislative reform.

Fuchs, a graduate of Harvard University, where he earned his Ph.D. in government, now is a Walter and Meyer Jaffe Professor of American Civilization and serves as chairman of the Department of American Studies at Brandeis University in Massachusetts. Our interview with him began by telephone. A copy of the interview was later sent to him for revision and clarification. This is the result:

Native Hawaiian

American orphan of a monarchy

(Final installment)

1. Was the United States was responsible for the overthrow of the monarchy?

Oh, yes. The United States government through its American minister participated in . . . the overthrow of the monarchy, and President Cleveland recognized that . . .

There's no question the United States government stimulated and participated in and eventually acquiesced in the overthrow of the monarchy.

2. Do you believe native Hawaiians should get reparations and if so, in what form?

It all depends on what you mean by reparations. Money paid out to descendants of Hawaiians alive at the time of the overthrow, no. That would not be helpful. Carefully designed programs to help ethnic Hawaiians to have greater mental health and physical health, yes! Hawaiians should be entitled to the best programs available to American Indians. But most people mean money when they use the word reparations, and in the revised edition to Hawaii Pono . . . (I say that) while money reparations for the overthrow of the monarchy might alleviate some of the grievances of Hawaiians, it would not touch their real problems.

That (reparations) as a symbolic gesture would give some gratification to native Hawaiians, but it has no real bearing on the reality of the lives of native Hawaiians.

3. What are some of the problems that you feel should be addressed?

Persons of Hawaiian ancestry vary tremendously in the way in which they identify with their Hawaiian-ness and in the way in which they are able to cope with an essentially American, Western environment.

. . . We have to be careful not to talk about problems and solutions as though we're dealing with one kind of people and one set of problems.

One of my dearest friends in Hawaii is a very strongly identified ethnic Hawaiian, Professor Blaisdell at the medical school, Dr. Richard Kekuni Blaisdell, a very distinguished hemotologist, who lives in Nuuanu Valley. He has friends from all groups, and he functions very well. He has the normal problems of any successful doctor and of any family man. But we're not talking about him.

We're talking about those Hawaiians, those ethnic Hawaiians who not only have a very deep sense of alienation from the dominant culture of the islands — and I'm not talking about the local culture within that dominant culture; I'm talking about the Western American culture — but who also are not doing well in school or at work.

After all, we all know that Hawaiians as a group have the highest infant death rate, most difficulty in the school, the highest rate of mental and physical illness and suicide and very high rates of crime. Now, those

See OVERTHROW, page A4

Workers construct a native Hawaiian hale, or longhouse, to ancient specifications on Kahoolawe

Power base: Without it, Hawaiians have little say

By GARY KUBOTA
Staff Writer

WASHINGTON — Hawaii attorney Melody Mackenzie reviewed some legal arguments in her mind as she crossed the street toward the U.S. Department of Interior building.

As executive director of the Native Hawaiian Legal Corp., Mackenzie was in charge of directing lawyers to defend many aboriginals in suits in the state of Hawaii. On this day, however, the stakes were a bit higher.

She knew that the Reagan-appointed Native Hawaiian Study Commission was supporting the view that the United States held no responsibility for the overthrow of the Hawaiian monarchy.

Many of the arguments stemmed from a legal analysis by commissioner Carol E. Dinkins and her staff at the Justice Department. At previous meetings, Justice attorneys defended their points in the majority report.

Mackenzie and another attorney, Jon Van Dyke, wanted to present the opposite view. However, after traveling more than 5,000 miles to the Capitol, they were never allowed to engage in formal talks.

Instead, their request to speak for the record was challenged by majority commissioners, including Dinkins. At one point, during a recess, the commission did allow Van Dyke to speak, but only informally.

Mackenzie now believes most of the commissioners did not take their work seriously.

"I think the hidden agenda here was to say the that federal government has no responsibility," she said of the March 1983 meeting.

Now, about a year later, another agenda is being set, this time to review the work of the commission itself.

The hearings are to be held in April in Hawaii by the U.S. Senate Committee on Energy and Natural Resources.

U.S. Senate and House members from Hawaii have joined three minority commissioners from their state in charging that the majority report is "erroneous" and "inadequate."

Besides Mackenzie's complaint, critics have alleged that the commission failed to vigorously conduct the study and relied upon secondary sources of information.

The commission's own Naval historian, Dr. William Dudley, has voiced misgivings about the research methods.

Moreover, the majority commissioners' recommendations seem in conflict with the views held not only by minority commissioners, but also by two well-respected historians: Dr. Gavan Daws, a professor at the Australian National University, and Dr. Lawrence Fuchs, chairman of the American Studies Department at Brandeis University.

Both men, who have written histories about Hawaii, were never called upon to testify before the commission.

Although neither has reviewed the report — nor have they been asked to by majority commissioners — both Fuchs and Daws agree that through acts by its Minister John L. Stevens, the United States participated in the overthrow of the monarchy.

Interviewed by The Maui News, Daws and Fuchs indicated they believe the U.S. bears some responsibility for the overthrow and loss of sovereignty. However, Daws said he remains skeptical that Hawaii will receive compensation because it lacks political power. (See related interviews with Daws and Fuchs on page A1 and A4.)

Like Daws, political observers note that the decision by Congress to give native compensation hinges not only on moral or legal issues. It also rests on the ability of native Hawaiians to flex political muscle and to be taken seriously.

Some observers say the general public and elected officials have difficulty conceiving that life could be difficult in a "tropical paradise" and part of the task will be to have them see beneath the tourist veneer.

They point that out native Alaskans received their settlement claims at a time in the 1970s when the national mood seemed more liberal and there arose the highly-visible Indian conflicts at Wounded Knee.

They also say the settlement came about primarily because of the desire of Congress and the federal government to develop the oil pipeline on the North Slope in the early 1970s.

Had there been no claims settlement, native Alaskan groups could have tied up petroleum development for years.

"It became pretty obvious that until native claims were settled here, there would be no oil development," said Donald Mitchell, the former general counsel for the Alaska Federation of Natives, the group that lobbied for the claims.

Mitchell, who is writing a book about the native Alaskan claims act, notes that same desire to develop oil was present in the successful Indian claims settlement at James Bay in northeastern Canada.

Observers point out this kind of situation-political-power does not exist in Hawaii, and the lack of it may prove to be a major political disadvantage.

Moreover, the native Hawaiians seem to be just beginning to organize themselves as a political force in Hawaii.

"We don't have an established power base," acknowledges Joseph Kealoha, chairman of the Office of Hawaiian Affairs, an institution mandated by the 1978 state Constitutional Convention.

Until Office of Hawaiian Affairs officials were elected for the first time in 1980 by native Hawaiians, the aboriginals had no official voice speaking on their behalf.

Kealoha, an optimist, said an awareness is growing among native Hawaiians about their history and culture, and he sees the evolution of a stronger movement within the state.

He said outside of Hawaii, the organization is attempting to establish links with other ethnic minorities, such as the Japanese American Citizens League.

In the past, his office has supported the league's efforts to obtain redress for the United States' internment of many Japanese-Americans during World War II. Recently, league members have indicated they will testify in support of native Hawaiian reparations at the forthcoming Senate hearings in Hawaii, Kealoha said.

Politically, native Hawaiians appear to face the most resistance in the U.S. Senate, where conservative Republicans control the majority of seats over Democrats, 55-45. Observers say because of this, Hawaiians may encounter more difficulty than the native Alaskans did in successfully seeking compensation more than a decade ago.

They note that although the Democrats, who are generally regarded as more liberal, control the House seats, 268-167, both houses of Congress are required to pass a bill.

"It would be unreasonable to say we can expect easy passage of this legislation," said one political insider. "If it were to come up for a vote to the full senate now, it would probably not pass."

Another insider agrees the climate seems conservative but believes Hawaiians will eventually get reparations or a settlement within seven or eight years.

The observer generally regards the members of Senate Committee on Energy and Natural Resources as "not bad at all."

Although Republicans outnumber Democrats, 12-9, on the committee, some GOP members are regarded as moderates and may vote with Democrats on certain issues. They include Mark Hatfield of Oregon, Lowell P. Weicker Jr. of Connecticut and Peter Domenici of New Mexico, the observer said.

The insider said committee chairman James McClure of Idaho is regarded as more conservative than the three senators and in line with the "New Right" but not "the nut wing" of it.

McClure's office said he has expressed no position on the native Hawaiian reparations issue. However, it is known that McClure was among those who recommended the appointment of James Watt as Secretary of the Interior.

Stephen Shipley, an assistant to then-Interior Secretary Watt, was a leader that formulated the commission's majority report recommending no reparations to Hawaiians. It remains unknown what effect, if any, the association between Shipley and Watt might have on McClure.

One fact does seem certain at this time: McClure will not be attending the hearings in Hawaii, in part because he is campaigning for re-election, according to his Washington office.

Furthermore, a McClure spokesman said the committee will not know how many others will be at the hearings until four or five days before the event.

A Congressional observer doubts there will be any major legislative action regarding native Hawaiians this year, because like McClure, many senators are running for reelection.

"We have to think in terms of a number of years on an issue like this," the observer said.

Native Hawaiian

American orphan of a monarchy

(Final installment)

Maui News photo

JOSEPH KEALOHA
Hawaiians without "power base"

Senate panel sets NHSC Maui review

THE U.S. SENATE Committee on Energy and Natural Resources is scheduled to meet April 10 on Maui to discuss the Native Hawaiian Study Commission's majority and minority report.

The meeting, to start at 10:30 a.m., will be held in the Maui County Council Chambers in Wailuku.

Sen. Spark Matsunaga from Hawaii, a member of the committee, is expected to preside as chairman of this hearing and others to be held statewide.

They also will be held on April 16 at the State Capitol on Oahu, on April 17 in Yano Hall in Captain Cook on the Big Island, and on April 20 in the Kauai County Council Chambers.

Matsunaga can be contacted at:

— 109 Hart Senate Office Building, Washington, D.C. 20510, telephone (202) 224-3934, or

— Room 3104, Prince Kuhio Federal Building, Honolulu 96850, telephone 546-7565.

The committee's address is Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510, telephone (202) 224-4971.

The 12 Republicans on the committee include its chairman, James A. McClure of Idaho, and Mark Hatfield of Oregon, Lowell P. Weicker Jr. of Connecticut, Peter V. Domenici of New Mexico, Malcolm Wallop of Wyoming, John W. Warner of Virginia, Frank Murkowski of Alaska, Don Nickles of Oklahoma, John H. Chafee of Rhode Island, H. John Heinz III of Pennsylvania, Chic Hecht of Nevada and Dan Evans of Washington.

The nine minority Democrats include Matsunaga of Hawaii, J. Bennett Johnston Jr. of Louisiana, Dale Bumpers of Arkansas, Wendell H. Ford of Kentucky, Howard M. Metzenbaum of Ohio, John Melcher of Montana, Paul E. Tsongas of Massachusetts, Bill Bradley of New Jersey and Carl Levin of Michigan.

Hearings on the same issue are expected to be held later this year by the U.S. House Committee on Interior and Insular Affairs. Its address is 1324 Longworth House Office Building, Washington, D.C. 20515, telephone (202) 225-2761.

The 23 Democrats on the committee, as listed in a 98th Congressional directory, include chairman Morris K. Udall of Arizona, Abraham Kazen Jr. of Texas, John F. Seiberling of Ohio, Antonio Borja Won Pat of Guam, James Weaver of Oregon, James J. Florio of New Jersey, Philip R. Sharp of Indiana, Edward J. Markey of Massachusetts, Baltasar Corrada of Puerto Rico, Austin J. Murphy of Pennsylvania, Nick Joe Rahall II of West Virginia, Bruce F. Vento of Minnesota, Jerry Huckaby of Louisiana, Jerry M. Patterson of California, Ray Kogovsek of Colorado, Dale E. Kildee of Michigan, Tony Coelho of California, Beverly B. Byron of Maryland, Ron de Lugo of the Virgin Islands, Samuel Gejdenson of Connecticut, William Patman of Texas, Peter H. Kostmayer of Pennsylvania, James Moody of Wisconsin, Alan B. Mollohan of West Virginia, James McClure Clarke of North Carolina, James F. McNulty Jr. of Arizona, Richard H. Lehman of California and Sala Burton of California.

The 14 Republicans include Manuel Lujan Jr. of New Mexico, Don Young of Alaska, Robert J. Lagomarsino of California, Dan Marriott of Utah, Ron Marlenee of Montana, Richard B. Cheney of Wyoming, Charles Pashayan Jr. of California, Larry Craig of Idaho, Hank Brown of Colorado, Denny Smith of Oregon, James V. Hansen of Utah, Bill Emerson of Missouri, John McCain of Arizona and Barbara Vucanovich of Nevada.

Overthrow fault lies with U.S. . . .

Continued from page A1

are the problems of human beings, a disproportionate of whom happen to be Hawaiian, of substantial Hawaiian ancestry.

When I visited the boys and the girls (youth correctional) home over on the Windward side on Oahu maybe 10 years ago, it was very clear that Hawaiian youngsters much more than others had great problems acting out against the world that they found themselves in.

Now, they're not unique. They are problems that are disproportionately found in the urban cities of the Mainland among blacks and Puerto Ricans, particularly, but among others too. So what does one do about that?

Well, that gets very complicated when you have a group of people who so strongly feel disaffiliated or alienated from the mainstream. Many ethnic Hawaiians do. But those I presume are what you mean by the problems . . . it's a great continuing agony for them.

4. Do you believe the state and federal government has done all it can to help them?

Unfortunately, I believe there's not a great deal the government can do to help native Hawaiians, as such. After all, look at the great panoply of programs that exists for native American Indians who also have very high rates of mental and physical illness and suicide and high rates of crime.

If you look at a book called "Information U.S.A." which tells about all of the government programs that exist for one thing or another, you will see there are a hundred of them that deal with native American Indians. Yet it's very hard to know, hard to see what the results have been. The same thing is true about the Hawaiian Homestead Act. See how it has worked out.

So when you say, "Have they done enough?", (in my opinion) you can never do enough to help a people who have serious problems of health, serious problems of learning, and functioning, and serious problems of crime. You can never do enough. The question is, do you know what to do? Do you know how to do anything effectively? And that's what's tough. We really know very little about what to do effectively.

5. What do you mean by "comfortably and effectively?"

People who feel good about themselves. That doesn't mean they're not discomforted. They might hate downtown development and fight against it. They might be agitated about things they might see as being bad for Hawaiians. But all of us have problems. I could give you say, oh three, four, five people I know of Hawaiian ancestry who seem to negotiate the dominant culture and its world very well and deal with it effectively and still maintain a strong sense of identity, ethnic Hawaiian identity. So, it's possible.

We know it can be done. We know there is no inevitability to high crime and high rates of mental and physical illness and drop out rates in the schools. It can be done. So, I'd like to see someone look at that more carefully. And a lot of this has to come from within the Hawaiian community. This is what I have come to believe.

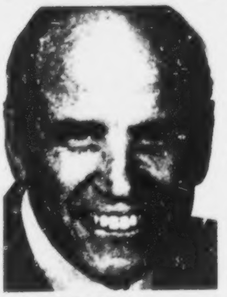
I don't think they should be like us. But I do think that there is not much we can do at this point — reparations or a new homestead policy or whatever. I think Hawaiians have to generate answers to these questions.

One has to be careful . . . in setting up a kind of corporate pluralism in which there is tremendous pressure on individuals to conform to the ledership of the corporate group. One can acknowledge that the American government is responsible historically for a lot of things, an enormous amount of stuff — all of those laws against aliens, particularly Chinese aliens on the West Coast and not permitting Asian aliens to become eligible for citizenship, all the "Jim Crow" laws and everything else.

The USA can be held responsible for not letting Jews vote in half a dozen states up around the 1830s or to hold office because the Supreme Court said that's the business of the state. So the government is responsible for all of those things which we look back on now and say, "That was absolutely wrong." But we cannot and should not, as a result of that, move toward a system of corporate group pluralism in which we distribute benefits to the leaders of groups on a basis of their ethnic identity and their sense of grievance about how their ancestors or some of their ancestors were treated in the past.

What we have to do is have a system in which people are free to be as ethnic as they want to be but at the same time, if they want to participate in the wider market place of government, politics and economics, they really have to learn what the rules are of the dominant culture and abide by them in order to be effective.

And those rules to a very great extent are predicated on the idea of individual rights and not group rights, of reward for individual merit and achievement based upon some kind of meritocracy ideas or standards which are supposed to be culture free, which means one moves toward a more uniform standard of culture as one lives and works in that market place.



DR. LAWRENCE H. FUCHS

Now for people who don't want to be successful in that, that's OK. But that's fine if they somehow can make a living enough to support themselves, their families, to feel good about themselves. But there is no way the government can recognize, on a corporate basis, ethnic groups and say, well, we're going to give this group that and this group that.

Now the exceptions to this are, first, the native American Indians, who have a constitutional treaty and trust relationship.

The second exception — and it's a greyer area — are the native Hawaiians, the Aleuts and the Eskimos. And they are the greyer area because they don't have the treaty relationship, and they don't have established in great constitutional cases, as some of the Indians do, the trust relationship.

That goes back to Supreme Court Justice John Marshall. And therefore some policies, some government policies, recognizing the limitations of government can and should be directed towards helping those groups toward whom there is this special responsibility because they are the descendants or recipients of the legacy of conquest, as opposed to the legacy of immigration.

And it makes a difference. I acknowledge that. I know I'm making generalizations here. But when it comes down to a specific policy, you have to say, here's the policy, is it constitutional?

Second, is it something that is good public policy? That is, is it something that would do more good than harm, more good for the people toward whom it's directed?

And third, what does it cost and what are the alternative policies or ways of achieving the same goal?

So, I don't say government shouldn't do things that are special and different. I don't say that ethnic Hawaiians don't have a special relationship to the government than Nisei or Sansei or Chinese-Americans or Polish-Americans and so on. They do. I just think we have to move in this area in a very careful way, with recognition of how difficult it is to accomplish good within the history we've had. The Hawaiian Homestead Act is the best example of that.

6. Then you support reparations?

Well, it depends on what you mean by reparations. If it's a check, so much money in the mail to everybody who has one-eighth Hawaiian blood or something like that, no, that's not a good way. That's a broadside approach that's not good.

But if you mean by reparations a specific program, let's say dealing with opportunities to bring Hawaiian medicine, ancient Hawaiian practices and modern practices into some kind of synthesis and to train medical doctors at the medical school who know how to do that, if that's what you mean by reparations, yes. That's the kind of program that often can be very helpful.

7. Are there any Pacific Islanders that have been able to emerge into the 20th century with their culture intact in a modern capitalist society?

The first thing is this: Nobody's culture is ever totally intact, because change is the law of life and even so-called "traditional cultures" were modified. The thing about modernity is its not just capitalism, it's modernity.

The information flow is so tremendous. There is new knowledge all the time and exposure to other cultures is so great that change is more rapid . . . Some things went on in the old days in Samoa that I don't know if Samoans would want them to remain intact. So that's a tricky kind of a question in itself.

The main thing is not so much whether an entire culture remains intact but whether people feel good about themselves, they are respected because they are recipients of a cultural legacy, that they feel proud to be Samoan or something else. And that they also function well in what you say is the "modern capitalist society."

I wish I could say I had clear answers. I've thought about this so long and read about so much of it and I don't. I wish I could say this is the program and that is the program we ought to go on now.

Dr. Gavan Daws: U.S. played 'decisive' roll

TO SOME, A discussion about Hawaiian history and native Hawaiian reparations would would seem incomplete without an interview with Dr. Gavan Daws, the author of "Shoal of Time: A History of the Hawaiian Islands."

His book examines early Western influences in Hawaii, including the overthrow of the monarchy.

Dr. Daws has taught history at the University of Hawaii and now occupies the chair of Pacific History, Research School of Pacific Studies at The Australian National University's Institute of Advanced Studies.

He has served as a commissioner on the UNESCO Commission for a Scientific and Cultural History of Humankind and has collaborated in producing and directing the 1982 film "Angels of War: The People of Papua New Guinea and World War II."

The film was recognized as Best Documentary in the Australian Film Awards competition.

Our interview initially took place by telephone with him in Australia. A transcript of the interview was sent to him for final revisions. This is the result.

1. Do you believe the U.S. was in any way responsible for the overthrow of the Hawaiian monarchy?

I would say intervention by official agents of the U.S. was decisive in the immediate events that led to the overthrow.

The revolution of 1893 was organized in Honolulu by U.S.-oriented haoles (whites) specifically to put Hawaii in a position where it could be annexed by the United States. That meant overthrowing the monarchy. The U.S. minister to Hawaii favored the revolution. He told the revolutionaries, prior to the revolution, that he would recognize any government they might form after the monarchy was overthrown. He arranged for U.S. marines and sailors under the command of U.S. officers to be landed from a U.S. warship in Honolulu harbor. These marines and sailors were on the streets of Honolulu under the U.S. flag, in U.S. uniform, armed. Their presence was the "superior force" that caused Queen Liliuokalani to "yield" her authority, under protest. The U.S. minister immediately recognized the government formed by the revolutionaries. In my opinion, this amounts to decisive U.S. intervention.

2. How would you perceive it happening, if not for the troops?

It is an open question whether the revolutionaries of 1893 would have gone ahead that day without U.S. troops on the streets. But it is a certainty that the revolutionaries would have tried again, and that they would always have been looking for U.S. backing and involvement.

Now, beyond what these U.S.-oriented revolutionaries in Hawaii were trying to accomplish, there is the position of the U.S. itself to consider. With that in mind, it is hard to imagine Hawaii keeping its independence beyond the 1890s. This was the decade in which the U.S. made up its mind to become an imperial power. The decisive year was 1898, when the U.S. moved to annex several places in the Pacific, using military force, as part of an overall plan to establish a world-level presence in that hemisphere. Along with Guam, American Samoa, the Philippines, and so on, Hawaii was considered essential to this geopolitical strategy.

3. Do you believe native Hawaiians should get reparations for U.S. participation in the overthrow and if so, in what form?

Morally, yes. Of course what happened to Hawaiians is part of a much broader worldwide process, centuries old now, in which developed societies in the process of expansion have come down heavily on native peoples or ethnic minorities and left them more or less permanently disabled or even extinguished.

To me, the moral liability is self-evident. But restitution or reparation or compensation after the fact — often long after the fact — well, this gets to be far more decisively a political question than a moral question or even a legal question. And the same power politics that caused the disablement in the first place can operate to perpetuate it.

DR. GAVAN DAWS

'Twentieth century Hawaiian society, in my opinion, needs large numbers of new specialists . . .'

As to what form restitution or reparation or compensation might take, again there are any number of propositions. Just for comparison, here are the fundamentals of a proposed treaty between the Australian Aborigines and the Australian government.

The treaty would acknowledge the right of the Aborigines to: (1) Maintain and enjoy their distinctive identity, their traditional laws, languages and culture. (2) To have acknowledged their title to land to which they can show valid claim in Aboriginal law and custom where this can be done without injustice to others who have acquired title to it. (3) To be helped to acquire other lands necessary for their social and economic purposes. (4) To be compensated "on just terms" for the loss of their traditional lands which cannot be restored to them and for the damage to their ancient way of life. (5) To control absolutely the exploitation of the resources of the land to which they hold title. (6) To manage their community affairs in ways of their own determining and to establish their own organs and institutions for this purpose.

4. Do you think the Hawaiians have political weight?

Unfortunately not where it counts in this case, which is nationally, meaning with Congress and the U.S. court system, and internationally, meaning with the United Nations.

Again, worldwide, native peoples and ethnic minorities have always had a dreadfully difficult time making their human and moral case against big nation states, right down to the level of basic survival.

Looking specifically at Hawaiians within United States society, the view from the Mainland has always been and continues to be that Hawaii and Hawaiians are remote and exotic and a bit unreal — so it's hard to take them seriously. By comparison, American Indians, native Americans, with all the terrible things that have happened to them, at least have always been part of Mainland U.S. consciousness, or it's just that it's a little bit easier for their moral claims to command a hearing. So in terms of generating political weight, Hawaiians are in a very difficult situation indeed.

5. Do you believe the federal government and state government have done all they can to help native Hawaiians?

No. Like all governments, they have done what they have been persuaded or compelled to do at any given time — and this gets back to the question of political weight.

Federally, as I've said, Hawaiians are always going to be at a tactical disadvantage compared to other national minority groups which are either bigger in number or right on Washington's doorstep, so to speak.

Locally, the tactical problem is the same. Political weight anywhere is measured in organized groups of registered voters with lots of money or inexhaustible energy, preferably both. The difference is that locally the question is potentially much more in the hands of Hawaiians and others who can be persuaded to support them.

6. What do you think needs to be done to help the native Hawaiians?

This is a huge question with an infinite number of answers, and it's certainly not for me to hand down prescriptions from a distance.

But one thing does occur to me as a result of looking at the present situation of a lot of other Pacific peoples, and Australian Aborigines. What they can all use in their own cultural interest is a tremendous increase in the number of professionals and technical specialists of their own ethnic group, able to deal with the sources of power in Western politics, economics and society generally from a position of equal competence and strength. The list is endless. Attorneys who really know Western land law. Accountants who really know tax law. Doctors and nurses able to mediate between high-tech medicine and patients who don't want to give themselves body and soul to high-tech society. And on and on.

Traditional Hawaiian society had highly-trained specialists of all kinds. Twentieth century Hawaiian society, in my opinion, needs large numbers of new specialists who can deal sensitively with Hawaiian culture and strongly with 20 century American society.

All this has to start with an education for Hawaiians in culture and power. And here Hawiians have an enormous asset — the income from Bishop Estate lands that goes exclusively to Kamehameha Schools. Everyone knows that on all kinds of indexes, Hawaiians are heavily disadvantaged. By contrast, the enormous wealth of Bishop Estate gives Hawaiians one place where, in terms of money, dollars per head for education, Hawaiians are statistically ahead of the game. Even at this stage in the 20th century, I don't think the potential of Bishop Estate money has been put to maximum use to Hawaiian advantage.

7. To your knowledge, are there any success stories about native Pacific islanders who have managed to emerge into the 20th century with their culture generally intact?

Every Pacific island culture has been affected. Some have been almost obliterated, most, fundamentally, by disease — Rapa Nui, Mangareva, the Marquesas come to mind in the 19th century. The Australian Aborigines were systematically hunted from their lands, subjected to introduced disease and in many places, systematic slaughter.

In the 20th century, some islanders haven't been able to live on their islands as they used to — Nauruans because phosphate mining literally scooped the island away, Bikinians and other Marshallese because of radiation poisoning. Even where the bombs aren't tested close by, nuclear testing changes things irreversibly — twentieth-century Tahitian society has never been the same since the French set up a military establishment there to run their bomb tests in the Gambiers.

Where would you look for "success stories"? Places where islanders have kept their lands, their culture, their identity and their political autonomy to a greater extent than elsewhere. You could probably say that some parts of Papua New Guinea roughly answer this description, and that the independent nation of Papua New Guinea represents a good try at keeping things that way, so far at least. Fijians were culturally "protected" by Great Britain in the colonial period. Whether that has been the best thing for the late 20th century is an open question, just as in Hawaii, Asian immigrants have done better economically and politically. As far as Polynesia is concerned, I think you would have to rate Hawaii far lower on the scale of cultural "success stories" than Western Samoa and Tonga, which are independent small states where a Polynesian language is spoken and where village society survives, and lower than New Zealand, where the Maori, after a much tougher resistance to white invasion than was the case in Hawaii, seem to have made a more substantial place for themselves in a 20th century, multi-ethnic society.

8. The majority report of the Native Hawaiian Study Commission says, although the U.S. military did participate in the overthrow, the U.S. government was not responsible because the U.S. government did not directly order the military to land. What's your opinion?

I haven't seen the report. But I can think of cases in other parts of the world where unauthorized acts were carried out by agents of a government — meaning people in uniform or under a nation's flag — and the home government subsequently took responsibility.

For example, a few years before World War II, Japanese planes bombed and machine-gunned a U.S. gunboat and some American-owned oil tankers in Chinese waters (the Panay incident). The U.S. protested to the Japanese government. The Japanese government denied authorizing the attack, calling it a case of "mistaken identity." Even so, the Japanese government accepted responsibility, apologized, removed the officer responsible from his command and paid damages of more than $2 million.

Another example. In South Africa, in 1896, when British and Boers were in an imperialistic contest to control what used to be Black African lands in the Transvaal, a party of armed Britishers moved into a Boer-controlled area hoping to stir up revolution and push the Transvaal Britain's way. They were actually subjects of a British-controlled South African republic but the British home government acknowledged their responsibility and held a parliamentary inquiry.

Actually, you don't have to go that far afield to find such cases. In Hawaii in 1843, the commander of a British warship used the threat of force to compel Kamehameha III to cede the islands to Britain. The British government took responsibility for this unauthorized act, and later returned sovereignty to the Hawaiian monarchy.

Now, international law and military laws are enormously complicated fields in which I have no competence. But common sense would argue that if a U.S. minister and a U.S. naval commander together put uniformed armed men under the U.S. flag into the middle of a revolutionary situation, then the U.S. government surely has to take SOME (his emphasis) responsibility.

And, in fact, President Cleveland's government did begin by taking another look altogether at the Hawaiian situation, with the idea of returning sovereignty to the monarchy. But this, as is well known, got tangled up with non-negotiable demands by both the revolutionaries' Provisional Government and Queen Liliuokalani. And this, in turn, led to the founding of the Hawaiian Republic, which wanted nothing more than to be annexed by the U.S. And when the Cleveland government was followed by the McKinley administration, which was imperialist, the U.S. saw the fulfillment of its highest national responsibility as leading inevitably not to the return of sovereignty to the monarchy but to the annexation of Hawaii.

Mrs. KAMALI'I. Thank you, Mr. Chairman. I wanted to identify these witnesses, however, as having a particular role in the formal discrediting of volume I, and to indicate my endorsement of their presentations as reflecting my own sentiments about the factual content of volume I.

It would be a great disservice to the people of Hawaii and to the members of this committee if my testimony this morning focused entirely on the specific disagreements between volumes I and II of the final report.

One of the greatest difficulties in preparing and presenting specific refutations of one document to assert another is that we are forced to follow a pattern or argument which gives too little attention to the larger issues and questions involved.

Although it is important, particularly at this stage of congressional review, to stress these details of dissent, we must also never lose sight of the fundamental moral dimension and human character of this inquiry. The people of Hawaii have a special pride in the history, traditions, and values of the islands. This Hawaiian character shapes and enhances our equally special pride in being Americans.

The traditions of the United States and of the Hawaiian culture are inseparable to me. I will cherish and honor both all of my life. What has been most disturbing to me personally is that some individuals may look at the disagreements within this final report and feel that they are being asked to choose between the twin sources of their identity and loyalty—or somehow, abandon and damn the United States. For myself, I could never make such a choice, and profoundly believe that there is no need to do so.

Native Hawaiians are Americans now, proud of the ideals and qualities of justice through law. The pride in being native Hawaiians is also strong. The overwhelming majority of Hawaiians do not want history to be rewritten or to separate themselves from the United States. As strong Americans and Hawaiians, there is a desire and a basis for the remedy of past wrongs and losses.

The official American encouragement and participation in the overthrow of the Kingdom of Hawaii in 1893 was a dishonorable act. Among diplomatic historians, this judgment that Hawaii was simply taken by the United States as a part of the imperialism of that time is not disputed or considered controversial.

Although historical facts must be understood within the context of their own time, many leaders who were contemporary to the events of 1893, including President Grover Cleveland, Secretary of State Walter Q. Gresham, and U.S. Attorney General Richard Onley, condemned that military and diplomatic intervention by the United States as a betrayal of American principles and a great wrong against the Hawaiian people.

This committee will, no doubt, Mr. Chairman, hear a number of speakers refer to the executive message of Grover Cleveland in acknowledging this wrong. What they may fail to emphasize is that his primary concern was that the United States—and I quote—"not fail to vindicate its honor and its sense of justice."

President Cleveland's address is an important and eloquent statement. However, no action was taken by the Congress of that day to heed his plea.

So the unfinished business continues to tarnish our national honor. We, therefore, recommend that Congress now formally acknowledge and apologize for those past wrongs, and that this gesture be given substance through reparations.

Moveover, when the United States subsequently accepted more than 1.7 million acres of former crown and government lands at annexation in 1898, another and deeper harm was inflicted. Although the United States did not immediately gain in its role in the overthorw, the subsequent transfer of these lands without the consent or compensation to the Hawaiian people is strikingly similar to other claims already settled by special congressional legislation.

Native American Indians and Alaskans experienced this very similar injury. As with native Hawaiians, although the moment of harm may have occurred two or more generations ago, the lands illegally taken are a legacy for the heirs of today and of generations to come.

Thus, I urge you and the rest of Congress to provide restitution for these claims of ancestral lands. The precise elements of this restitution can only be described in very broad terms. However, the negotiations needed to forge this settlement must begin now, immediately.

Lastly, I beleive that the two trusts which have been established by congressional action for native Hawaiians—and now administered by the State of Hawaii—must be restored to their legal proportions and integrity. Both the Hawaiian homes lands and the ceded lands trust have been violated and mismanaged.

These three claims: reparations for violations of international law in 1983, restitution for the lands transferred without consent or compensation in 1898, in violation of the American constitutional law; and restoration of the two trusts, as described in Federal legislation, these are the native Hawaiian claims of conscience detailed in volume II.

We have called them this because there is nothing but the honor and the conscience of the Nation to inspire and inform the settlement of these three claims.

Such is my belief in this Nation and its honor, that I know such settlement of native Hawaiian claims by the Congress is inevitable.

I am confident that the American and Hawaiian spirit will, as it has in the past, not simply merge and survive, but will join so that both will be strengthened and prevail. I know no more persuasive argument for settlement that the concept of ho'oponopono.

I would like to conclude, Mr. Chairman, my remarks by quoting from "Nana I Ki Kumu," Look to the source, for these words from Mary Kawena Puku'i: and I quote:

> In ho-oponopono, one talked openly about one's feelings, particularly one's angers and resentments. This was good. But talking things out is not enough. Something constructive must be done about the cause of the grudge, the the reasons behind the quarrel. And to get this done, talking about anger must be kept under control. Let the anger itself erupt anew, and more causes for more resentments build up. Setting things to rights requires all of the maturity one can muster. Only when people control their hostile emotions can satisfactory means of restitution be worked out. And usually it's pretty hard to forgive fully and freely until property has been returned or damage repaired or one's good name has been cleared.

Ho'oponopono seems to be a supreme effort at self-help on a reasonable, adult level. It also has the spiritual dimension so vital to the Hawaiian people, and even here, prayers, to Aumakua in the past or God in the present, are responsible adult prayers. The appeal is not the child-like "Rescue me. Get me out of this scrape." Rather, it is, "Please provide the spiritual strength we need to work out this problem. Help us to help ourselves."

With God's help, Mr. Chairman and members of our delegation, we will be successful.

Mahalo.

Senator MATSUNAGA. Thank you, Kina'u, for your most analytic presentation of the majority-minority reports.

Our next witness is from the Department of History, University of Hawaii, Dr. Pauline King.

STATEMENT OF DR. PAULINE NAWAHINEOKALA'I KING, ASSOCIATE PROFESSOR OF HISTORY, UNIVERSITY OF HAWAII AT MANOA

Dr. KING. Senator Matsunaga, Senator Inouye, Congressman Heftel, Congressman Akaka. Thank you for this opportunity to speak about this final report.

I am Pauline Nawahineokala'i King. I am the associate professor of history at the University of Hawaii at Monoa. And my emphasis in my publication of research is in Hawaiian history.

I'd like to testify on the uses of history in this Native Hawaiian Study Commission final report. There are two basic essays, historical in background, in this report. The history is used in other instances, but these two essays are specifically historical. I'd like to say that in both instances, there is superficial misleading of very bad quality for a historical person looking at them. But I'd like specifically to concentrate on the 10 pages of one of the reports that concerns the revolution in January 1893, the 4 days from the 14th through the 17th.

Certain conclusions and recommendations were said to be based on this casually produced historical essay. It would seem likely after reading this that the historical essay was not the basis for the conclusions and recommendations, but a product to support the conclusions already in mind and recommendations previously determined upon.

One of the major problems of this report, majority report, in other words, volume I, is that of heavy dependence on secondary forces, some of them of dubious scholarly value. For instance, a novel, and another instance, two cases of works that are imaginative recreations of history, rather than based on solid documentary sources.

Also, when a scholarly work has been used, it had been used in a way that suited the objectives of volume I. In other words, the third volume of Ralph Kuykendall's "History of the Hawaiian Kingdom: 1874-1893," isn't very scholarly work. However, there were just little sections taken out of Kuykendall's work and not the whole of particular statement. For instance, on very important issue would be the meeting of the annexationists, in other words, the revolutionists, on the Sunday, January 15, to plan the revolution. This was in Kuykendall, and this was mentioned. The second sentence in that paragraph is not mentioned, that the revolutionists were very concerned about their ability to acquire arms in order to support their revolutionary aims. Certainly a very important factor to consider in this whole 4 days of revolution.

Another factor considering the quality of this essay in volume I is the failure to use easily available collections of documents. The contention was made by the historian who wrote those pages that he had neither time nor capacity to go look into original documents, and consequently depended very heavily on Kuykendall's third volume. However, there are collections in Senate and House executive documents in 1892, 1893, and 1894 which had some very significant papers which are very available just to the everyday student in Hawaiian history. They're also collected in a volume called Papers Relating to the Foreign Relations of the United States, Affairs in Hawaii, published in 1894. This could have been used with Kuykendall's third volume. His work used as a base and broad outline, and these documents or materials which would not be emphasized in Kuykendall's volume or in other secondary sources.

Consequently, the majority report becomes something that is very suspect to the historian and anyone who does scholarly work in Hawaiian history. And the basis for their conclusions in volume I, the Commissioner's made three specific charges. And I'd like to spend the rest of the time talking about those briefly.

One is the involvement of the United States in the revolution in 1893. Another is the political climate in Hawaii in 1893; and finally the role of the U.S. forces in January up through April 1893.

As far as the involvement of the United States is concerned, the majority report tries to claim that the American Diplomatic Representative, Mr. John L. Stevens, was not sanctioned in his activities by the U.S. Government. There is no way in which this is proved in that report. As a matter of fact, in all of his references to Secretary of State Blaine and Foster, he talks about being mindful of his duty to the President of the United States, the State Department, and the Senate of the United States. He was never told that he was not acting in a way that was acceptable to the Department of State, and therefore, by extension, to the President of the United States.

In fact, in one instruction, Secretary Foster mentions that he should keep his confidential dispatches separate from his narrative dispatches so that there could be a certain kind of secrecy surrounding the material he was sending to Washington so it could be kept from Congress and the public in their discussion of this material.

The second thing is the political climate of 1893. It is claimed in volume I that the revolution was the responsibility of the Queen and a constitutional crisis, and did not involve the United States. While it is true that a constitutional crisis did exist, the annexationists or revolutionists too a strong stand against monarchy and the Queen, simply because they knew ahead of time that they had the support of the U.S. Government through its representative—diplomatic representative—and also the assurance as early Saturday, January 14, that American troops would land on shore.

And finally, I'd like to mention the very important issue, the role of U.S. forces. Volume I attempts to say that these forces had a very small part in the revolutionary days of 1893, in January. And yet it is obvious that this force was the strongest, best trained, best equipped military force on land in Hawaii, in Honolulu, in those days. When they landed on Monday, they became the crucial military force in Hawaii. There is confusion about how many there were, 100, 154, 162. Even if you take the number at 100 you can find in the records that this is the strongest military force in Hawaii. There is no reliable organized police, as Minister Stevens pointed out to Secretary Foster; no military forces, and the annexationists or revolutionists had little or no military experience.

So consequently, on those three vital issues, the Commissioner's for the majority, in volume I, have no basis for their conclusions and their recommendations, and consequently, one would have to look to volume II, to their issues that they bring up and their ability to use original sources in coming to their conclusions.

Thank you.

[The prepared statement of Dr. King follows:]

University of Hawaii at Manoa

Department of History
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Honolulu, Hawaii 96822

April 12, 1984

TO: Senator Spark M. Matsunaga, Chairman, Committee on Energy and **Natural Resources.**

FROM: Pauline Nawahineokala'i King, Associate Professor of History, University of Hawaii at Manoa.

RE: Historical Essays of the Native Hawaiians Commission Report.

I am Pauline Nawahineokala'i King, an associate professor of history at the University of Hawaii at Manoa. My field of concentration in research and publication is Hawaiian history.

I wish to testify in regard to the Native Hawaiians Study Commission Report and the uses of history as found in that report. Although historical material is used in several parts of Volume I, the majority commissioners report,there are two obviously historical essays; one entitled "Ancient History to the Reciprocity Treaty," and another "Diplomatic and Congressional History: From Monarchy to Statehood."

The majority of the commissioners drew conclusions and made recommendations on the basis of those historical essays. In fact the most important conclusions were drawn from a ten page section of the second essay where the events of the Hawaiian revolution of 1893 are described.

I could criticize the pages on the basis of what might have been. In this instance, I would state ideally what should have been done and what might have been done. This would mean a study of original documents with some secondary sources as support. If time limitations existed, scholarly secondary sources could be used with readily available collections of documents for clarification and detail. But such a discussion would not address the specific problem of what was written with what scholarly results. I will, then, concentrate my remarks on the essays as written and their defects. I will then indicate what could have easily been done by a competent researcher.

I will comment only briefly on the first essay. It is not an adequate rendition of the history of Hawaii from ancient times to the Reciprocity Treaty. It is superficial and misleading.

Two examples will point up my meaning. In the discussion of foreign relations, there is little correlation attempted of the results of foreign pressure upon internal events. The land revolution of the 1840s was a direct result of foreign threats against the independence of the Kingdom and the Paulet episode of 1843 when, in fact, independence was lost, albeit for only a few months. Without that constant external reality, the King and Chiefs would not have been impelled to change the traditional land holding system to that of a fee simple ownership system.

Also the treaty negotiated with the United States in 1849 is too briefly considered. Since the object of these essays is to delineate relations between the United States and the Hawaiian Kingdom, the discussion should include the wording of the treaty where the independence and the sovereignty of the Kingdom is recognized.

There are more deficiencies in the first essay. But it is more important to the problem at hand to discuss at length the second essay.

Because of the nature of the report, I will concentrate on the ten pages from 291 to 300 of Volume I. It is primarily on this information that the conclusions and recommendations are based.

The method used was explained in a memorandum in Volume I written by the historian William S. Dudley stating what he did. I will analyze that product and finish with some comments on what he could have done even given the constraints he himself claims.

Mr. Dudley was given the following guidelines: to produce a 15 to 20 page report, footnoted, on "what forces caused the monarchy to fall and what forces led to the annexation of Hawaii to the United States as a Territory in 1898." He was told that he could relie on secondary sources as sufficient for his review. Mr. Dudley wrote a summary based on secondary sources and a limited number of primary sources.

He relied heavily on Ralph S. Kuykendall's third volume of the

History of the Hawaiian Kingdom: The Kalakaua Dynasty, 1874-1893, (Honolulu, 1967). He stated he believed that the Kuykendall work was a "well-balanced interpretation, based on multi-archival research with careful annotations."

It is true that the Kuykendall work is excellent. But a selection of his material into a short essay creates again something that is superficial and misleading. Then to use this to come to conclusions and to make recommendations concerning a contemporary political situation is a misuse of scholarship for political ends

Mr. Dudley used some original documents to clarify controversial questions. He did not use collections of documents which are in government documents found in several forms and finally gathered in one volume known as Papers Relating to the Foreign Relations of the United States, 1894, Affairs in Hawaii. Original documents significant to this study appear there.

But let us take the pages produced by the chief of research in the Historical Branch of the Naval Historical Center and see if even by his own rules and under his own terms the article can withstand historical criticism.

My conclusions are that they cannot. First there are places where Kuykendall is cited as source for a statement. Yet only a portion of the information is used and a significant portion left out. As an example on page 591, Mr. Dudley mentions that the members of the Annexation Club's Committee of Safety met and planned revolution. He fails to mention that they also were discouraged about their capacity to obtain arms and ammunition. Yet the question of military forces is crucial to this study.

In his discussion of Stevens' role, he claims that Stevens was cautious in his actions. Yet he admits that Stevens' assurances gave the Committee strength of resolve in their opposition to the Queen. He also states that Stevens' acts gave the Queen and her party the idea that he and the United States forces were anti-monarchy. (294-295, 296)

Mr. Dudley appears to have avoided using the Blount Report and the Morgan Report, perhaps because of the controversial nature of the two. Yet he quotes from a secondary source which took the information transmitted from the Blount Report. It was an estimate of the military strength of the government, again a question crucial to an interpretation of those four days. He followed the comment by deprecating the size of the force from the USS Boston. (295) By these two statements, he dispenses with the importance of the role of military forces in the revolution. Yet the weakness of government troops, the lack of adequate military support for the Committee of Safety, and the strength of the American forces are vital topics to be discussed.

He speculates on Stevens' acts as an attempt to avoid complicity with the Committee of Safety (295), but he shows no basis in documents or secondary sources to prove the point. He notes the Queen's document yielding to the superior forces of the United States (297-298), yet he fails to note that S.B. Dole, the president of the Provisional Government, endorsed the document on the back. Dole, then, essentially agreed with the Queen that United States forces were instrumental in the abrogation of monarchy. This fact is in Kuykendall, Volume III, page 603.

He indicates that protection was given to the Provisional Government from January 31 to April 1, 1893, but he does not indicate the significance of the act in terms of the American military force sustaining the Provisional Government at the same time it trained Provisional Government forces in military exercises. (298)

What can be discovered by a cursory look at documents and the intelligent asking of the right questions? The key events which need explanation in order to influence the conclusions of the majority commissioners are those which surround the four days of the revolution from Saturday, January 14 through Tuesday, January 17, 1893. The major concern is the attempt to determine what role agents and military forces of the United States played in these events.

In the "Executive Summary," the majority of the commissioners have stated

> In 1893 the monarchy was overthrown. The overthrow, and the lack of resistance by the queen and her cabinet, was encouraged in part by the presence of United States forces, consisting of one company of Marines and two companies of sailors (approximately 100 men), acting without express authority from the United States Government. President Cleveland, inaugurated just after the landing of United States forces, dispatched Representative Blount to investigate the events. His report blamed the American Minister, John L. Stevens, for the revolution. The United States Senate then commissioned the Morgan report, which reached an almost opposite conclusion. The Commission believes the truth lies between these two reports (p.25-26)

Again the report states

> To summarize the Commission's findings with regard to the overthrow of the Hawaiian monarchy: Based upon the information available to it, the Commission concluded that Minister John L. Stevens and certain other individuals occupying positions with the U. S. Government participated in activities contributing to the overthrow of the Hawaiian monarchy on January 17, 1893. The Commission was unable to conclude that these activities were sanctioned by the President or Congress. In fact, official government records lend strong support to the conclusion that Minister Stevens' actions were not sanctioned.
>
> Besides the findings summarized above, the Commission concludes that, as an ethical or moral matter, Congress should not provide for native Hawaiians to receive compensation **either for loss of land or of sovereignty. Reviewing the situation generally, including the historical changes in Hawaii's land laws and constitution before 1893, the Hawaiian political climate that led to the overthrow, the lack of** authorized involvement on the United States, and the apparent limited role of United States forces in the overthrow, native Hawaiians should not receive reparations.

There are four points made then: 1) concerning land laws and constitutions; 2)the political climate of 1893; 3)the involvement of the United States; and 4) the role of United States forces in 1893.

I believe that a witness will discuss Hawaii's land laws and constitutions. Consequntly I will address the last three points.

I will begin with the question of the involvement of the United States through the activities of the American diplomat, Minister John L. Stevens. The report attempts to indicate that Stevens' actions were not sanctioned by the United States Government. It should be noted here that the report does not challenge the view long held that Stevens acted certainly indiscreetly even illegally in his actions of 1893. The only point under question is whether he acted for the United States Government.

There can be no question that he did. From his arrival in 1889 until his departure in the spring of 1893, Stevens made clear his support of the American party in Hawaii as against the Hawaiian monarchy. As early as February of 1892, he was writing to the Secretary of state James G. Blaine that "The intelligent and responsible men here, unaided by outside support, are too few in numbers to control in political affairs and to secure good government." (Stevens to Blaine, No 46, Feb 8, 1892) He recommended that an American war vessel be present in Hawaiian waters in case of emergencies. By March of 1892 he anticipated a revolution and asked for instructions as to his behavior should revolution occur. (Stevens to Blaine, No. 48, Mar.8, 1892) He wrote often about the "Fidelity to the trust imposed on me by the president, the Department of State, and the Senate..." (Stevens to Foster No 74 Conf, Nov 20, 1892) In none of his instructions from Secretaries of States James G. Blaine or John W. Foster was he told that he should curb his active support of the one party to the political contest developing in Hawaii.

On the contrary, in a confidential instruction from Secretary Foster, Stevens is cautioned to separate his confidential dispatches from his "narrative" ones. This would make it possible to keep from Congress those dispatches including "matters of personal intrigue." The instruction is important to quote at length.

> I desire to suggest that you endeavor to separate your reports into two classes, one of which shall aim to give the narrative of public affairs in their open historical aspect, and the other to be strictly reserved and confidential character, reporting and commenting upon matters of personal intrigue and the like so far as you may deem necessary for my full understanding of the situation. Many

> of your dispatches combine these two modes of treatment to such a degree as to make their publication, in the event of a call from Congress or other occasion therefor inexpedient and, indeed, impracticable, without extended omissions. (Foster to Stevens, No. 62, Confidential, Nov.8, 1892.)

Minister Stevens believed that he was acting with the support of the State Department. By extension, then, he was also acting with the support of the President of the United States.

The second point I would like to discuss is that which concerns **the political climate of 1893. The report purports to believe that the revolution of 1893 abrogating monarchy** occurred because of actions of Queen Liliuokalani and without the involvement of American agents and forces. Yet it is clear from the record that the party in conflict with the Queen would not have carried the issue to fruition if the leaders had not been assured of the support of American forces as guaranteed by Stevens and Captain G. C. Wiltse of the USS Boston.

American support was indicated to the annexation party in Hawaii as early as May of 1892. Then Lorrin Thurston, the most aggressive of the enemies of the Queen, was in Washington, D. C. and had conferences with Secretary of State Blaine, and Secretary of the Navy B. F. Tracy. He received from Tracy the understanding that recognition of a provisional government would be granted should a revolution occur.

During the four days of the revolution from Saturday, January 14 to Tuesday, January 17, the members of the Annexation Club were constantly given the assurance that 1) Stevens and Wiltse would recognize whatever government had control of the government buildings and 2) that American troops would be landed to protect American life and property. And Stevens recognised the Provisional Government long before it had control of the town of Honolulu.

Revolution did not occur only as the result of internal pressures and conflicts between the monarchy and the Annexation Club. It occurred with the understanding that American support was there.

Thirdly, I would like to consider the role of United States forces in 1893. Here I would like to develop the point that the American forces landed on Monday, January 16, 1893 and placed strategically between the palace and the main government building were the most powerful military force on land in Hawaii during that time.

The information is conflicting. Anywhere from 100 to 200 marines and sailors were sent on shore on Monday. Even if the number were to be taken as 100, that force would still be the most experienced, best trained and equipped military force in Honolulu.

This was common knowledge in Honolulu. Both the government's military units and the police force had severe limitations. As early as February of 1892, Stevens was writing of the inadequate forces of the Hawaiian military and the limitations of the local police force.

All of this material is available to the researcher. All of these questions can be asked and reasonably answered by the use of secondary sources and collections of documents.

It would appear that the majority report was planned with certain conclusions already in mind and certain recommendations expected to be made. Then the historian was given the responsibility to write an essay which would support the political decision already arrived at. It is certainly true that history is written in this manner. But if it is done so, then the researcher responsible for the essay must be certain that the record can reasonably support his case. In this instance it does not prove to be true. Secondary sources and a swift review of available documents negates the product of the historian for the majority commissioners in Volume I.

Senator **Matsunaga**. Thank you very much, Dr. King, for your historic observations.

Our next witness is Mr. David Getches, executive director of Department of Natural Resources of the State of Colorado, from Denver, CO. We thank you for traveling such distance to be with us.

STATEMENT OF DAVID GETCHES, DENVER, CO

Mr. **Getches**. Thank you, Mr. Chairman, Senator Inouye, Representative Akaka, Representative Heftel.

I'm not appearing today in my official capacity, but rather because of work that I've done over the past several years related to American Indians and other native Americans, and their entitlement to redress against the United States.

As native Hawaiians have begun to recognize, their experiences and concerns, both current and historical, closely parallel those of other native Americans. One remarkable difference stands out, however, and that is that native Hawaiians are the only group of indigenous people in the United States of America with which the U.S. Congress has not sought to right historic injustices, mistreatment and loss of land.

Felix Cohen, known as the greatest scholar of all time in Indian law, wrote in 1947 that, "today we can say from the Atlantic to the Pacific, our national public domain consists, with rare exceptions, of land that we have bought from the Indians." Cohen was very proud that the United States, unlike other nations of the world, had dedicated such efforts to clearing the national ledger and the national conscience of transactions with Indians that resulted in acquisitions of land without compensation or for an inadquate price. Since Cohen wrote, hundreds of millions of dollars have been paid to native Americans for past unfairness. Nearly every recognizable group of American Indians has brought a monetary claims, vast amounts of lands has been transferred under the Alaskan Native Claims Settlement Act for Native Alaskans, and several Eastern Indian tribes have received lands and monetary compensation under recent congressional legislation.

Why have native Hawaiians been ignored? Why has the Nation not sought to do justice for this last 125,000 native Americans? Some have attempted to explain away the failure to deal with Hawaiian claims by saying that there are significant differences between the claims of native Hawaiians and the claims of other native Americans. They insist that native Hawaiians are culturally different. They insist that there's a historical difference. They insist that native Hawaiians lack the legally cognizable claims agains the United States. I'd like to address briefly each of these distinctions.

First, it is true that native Americans are not American Indians. They came to these islands some 1,200 to 1,500 years ago from eastern Polynesia, long before the recent arrival of European explorers. But special legal treatment has not been limited to a particular ethnic stock of native Americans. For instance, Alaskan Natives includes some people who are Indians, but also include Eskimos and Aleuts, whose ethnic origins are totally different and arrival more recent. Legally, they have been treated the same. It is well established that Congress can define and treat a group of people as native Americans within the special protection of the United States, so long as that group has some ancestors who lived in what is now the United States before discovery by Europeans, and so long as that group is a people distinct from others.

It is sometimes argued that there are substantial historical differences that set native Hawaiians apart from other native Americans. Hawaiians have no reservations, no treaties, no tribes. But not all Indian tribes have reservations. Some were organized historically just so the United States could take land from them as a single unit. Many tribes really had no aboriginal political organization. Many Indians were not fortunate enough to have reservations, and many never had treaties. Nevertheless, almost all of them have brought successful claims against the United States with the consent of Congress. A dearth of treaties, lack of reservations, and absence of tribal status did not deter Congress in redressing Alaska Native claims. Indeed, there is a much greater ethnic and cultural cohesion among native Hawaiians who share a common Polynesian heritage and language than among Alaskan Natives, who represent diverse ethnic groups, numerous languages, and hundreds of communities.

I might add that in many ways native Hawaiians are similar to other native Americans. Their history, while it is unique, has significant parallels to that of American Indians. For instance, the title to all the land in Hawaii is traceable to Hawaiians ownership. Hawaiians, like American Indians, have cultural reverence for the land. Native Hawaiian people, like Indians, have become important parts of the dominant society, yet they still resist the assimilation as just another American citizen. A robust aboriginal culture survives among Hawaiians and among American Indian tribes. And a final sad but true coincidence is that native Hawaiians, like other native Americans, share dismal statistics as to employment, education, and health.

The treatment of native Hawaiians is one of the darker chapters of American history. The United States was an active participant in the dispossession and the cultural erosion of native people. Hawaii had a well-developed political and social structure under which a unified kingdom had been functioning as a nation for almost a century before the islands were incorporated into the United States.

By 1890, however, foreigners, almost all Americans, had acquired over 1 million acres in Hawaii. They controlled much more land as a result of leases taken at bargain rates. This wasn't the result of any direct action of the United States, but it was the consequence of changes in the land laws of the Kingdom of Hawaii. And Americans were instrumental in bringing about those changes. Of course, an event of profound significance for native Hawaiians was the overthrow of the Hawaiian monarchy in 1893. This action wrested all remaining government and crown lands from Hawaiian control and put them into the hands of a provisional government, and eventually into the hands of the U.S. Government. The final years of the Hawaiian Kindgom were marked by substantial American influence, official and unofficial.

The United States later reviewed the history of the American role in overthrowing the Hawaiian Government. An investigation revealed facts that led Grover Cleveland to call for restoration of the monarchy. In a lengthy and eloquent message that's already been referred to today, the President observed that the overthrow was not by the people of the islands. Rather, he said, "The Provisional Government owes its existence to an armed invasion by the United States." He concluded that the U.S. role was opposed to American foreign policy, to morality, and to the principles of international law. And he called for the United States to vindicate its honor and to justice to the native Hawaiian people. Justice that still has not been done.

It may be argued that native Hawaiian's history is different in two important respects from that of native Americans. First, land wasn't acquired directly from them as a dependent group of aboriginal people, but instead acquired from a willing sovereign—the Provisional Government of the Republic of Hawaii.

The second distinction is that the United States has never treated native Hawaiians as it has other native Americans.

Now the first distinction. Surely the U.S. complicity in the overthrow of the Hawaiian Kingdom and subsequent behavior of the United States makes the first distinction illusory.

The other distinction: The Federal actions for the past 90 years that have failed to treat native Hawaiians as a distinct people brings two other responses. One is that there is indeed a history of executive and legislative actions that show some special concern for the rights and needs of native Hawaiians. First, native Hawaiian land tenure was recognized in the Organic Act, and the public land laws were not applied wholesale to them. Second, in 1910, Congress recognized the deteriorating social conditions of native Hawaiians and amended the Organic Act to make homesteading easier.

Third, the Hawaiian Homes Commission Act was passed in 1921 setting aside some 200,000 acres in order to rehabilitate native Hawaiians. These programs, as we know, were not successful.

The Hawaiian Statehood Act in 1959 in section 5(f) obligated the State to hold lands as a public trust for the public schools and for the betterment of the conditions of native Hawaiians.

More recently, the U.S. Congress has included native Hawaiians as beneficiaries of some acts passed for the benefit of all native Americans.

Each of these examples has failed in meeting its modest goals. Nevertheless, the special status of native Hawaiians is signaled by a history of particularized treatment.

Some have said that these few insolated examples were insufficient legal recognition. But it would be an irony if the inadequacy of past Federal programs would be used to justify interjustice.

The final point that is raised in opposition to native Hawaiian claims is that native Hawaiians have no legal right to assert a claim against the United States. This proposition is, at best, unremarkable. It simply misses the point. The question never has been whether native Hawaiians already have a legally cognizable claim to reparations. Rather, it is whether the circumstances are appropriate for Congress to provide, through statutory enactment, a remedy for past harms attributable to the United States. If there was already a remedy, this discussion would be unnecessary. Failing an act of Congress, native Hawaiians, just like other native Americans, can't bring a claim against the United States. Sovereign immunity protects the United States. The fact that there is no legal cause of action protects the United States. The fact that there has been a huge passage of time suggests the statute of limitations or laches would bar the claim.

The true issues, though, is whether equity and justice should move Congress to seek a remedy, and what that remedy should be. This is precisely the question Congress was called upon to answer when it considers scores of special acts that it passed to allow Indians to sue the United States, and when it debated the wisdom of the Alaskan Native Claims Settlement Act.

At first, Congress authorized Indian tribes to bring actions in the Court of Claims on a case-by-case basis. Special jurisdictional acts were passed beginning in 1836, and a total of 142 acts were passed by Congress to that end.

Comprehensive Indian claims legislation was not passed until 1946, when the Indian Claims Commission Act was established as an administrative forum to hear and decide a wide variety of claims. The act recognized many types of claims that were unheard of before that act was passed. New bases for relief included claims that were not recognized by any existing rule of law or equity, based on general principles of, in the words of Congress, "fair and honorable dealings." The goal of Congress was to do justice unrestrained by crabbed rules and technicalities.

When Congress passed the Alaska Native Claims Settlement Act, it did not reach the question of the nature and extent of the natives' aboriginal claims or rights. Hearings were held on the subject, but expediency and equity moved Congress to award relief, unfettered by elaborate legal arguments or neat distinctions.

In each case, Congress determined a legal framework not based on preconceived notion of legal right or what had been the limits of cognizable claims in another situation. The question has always been what seems appropriate to Congress, given prevailing notions of American fairness and American justice. That is the question to be asked concerning native Hawaiian claims.

In its majority report, the Native Hawaiians Study Commission last year included an unhelpful and misleading analysis of the claims of native Hawaiians. The analysis went to great pains to discover that there is no legal authority for claims to be brought by native Hawaiians against the United States. What was needed was a historical comparison of how the United States has dealt with native Hawaiians and their lands, and with the circumstances that have moved Congress to enact legislation allowing remedies to other native Americans. Had such an analysis been made, the conclusion would be unavoidable that: (1) native Hawaiians are a distinct group of aboriginal people in the territory of the United States; (2) native Hawaiians were once stewards of all the lands in what is now the State of Hawaii, and that land was held historically for the benefit of all; (3) most of the land in Hawaii that is now in Federal, State, or private hands was obtained from native Hawaiians without compensation or for unconscionably low prices; (4)

the U.S. Government was intimately involved in political and economic affairs resulting in the disposition of the lands from the Hawaiians and erosion of their culture; (5) the Federal Government from the start has assumed responsibilities and accepted obligations of trust toward native Hawaiians; (6) the programs and efforts of the United States to deal with the native Hawaiians have been largely unsuccessful; (7) socially and economically, native Hawaiians are in a desparate condition and in need of assistance.

These are the ingredients of a Federal claim by native American people. They track closely the elements that have led Congress to come to the aid of other aboriginal people. It's the obligation of the Federal Government to address the problem; it is a national problem that should not be masked by some superficial differences in history, or by a distorted or parsimonious legal analysis.

I cannot believe that the people of the United States will leave the claims of native Hawaiians permanently unredressed. But how much longer should Hawaiians be required to wait? Several generations have come and gone without the satisfaction of American justice. Once informed of the facts, Congress should take deliberate actions to seek means for remedying past injuries to native Hawaiians. Presumably, a remedy would involve some combination of land and money coming under control of native Hawaiians. They will take considerable deliberation and consideration, imagination and compromise, to reach a final settlement package that fits the cultural and social needs of the Hawaiian people.

Now the inquiry should rapidly turn from the past and questions of the worthiness of native Hawaiian to the future, and what approach will be taken in dealing with those claims.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Getches follows:]

Testimony of David H. Getches
before the
United States Senate Committee on Energy and Natural Resources
Honolulu, Hawaii
April 16, 1984

Mr. Chairman and members of the committee, I am pleased to have the opportunity to appear before you today. I have had a long and abiding interest in the question of Native Hawaiian claims against the United States. It is gratifying to see the attention being given to the subject by the committee.

I am currently Executive Director of the Colorado Department of Natural Resources. Prior to my appointment I was on the faculty of the University of Colorado School of Law for four years. Before that, I was the founding director of Native American Rights Fund (NARF), a national, non-profit law firm serving Native Americans in matters of major significance. I am co-author of _Federal Indian Law, Cases and Materials_ (with Rosenfelt and Wilkinson) and was on the Editorial Board of _Felix Cohen's Handbook of Federal Indian Law_.

For many years I have taught, lectured, and written on the law concerning Native Americans, concentrating increasing attention on Native Hawaiians and Alaskan Natives in recent years. More than ten years ago I began consulting with lawyers and Native groups in Hawaii.

The recent past has been marked by a growing awareness among Native Hawaiians that their experiences and concerns, both current and historical, closely parallel those of other Native Americans. One remarkable difference stands out: Native Hawaiians are the only group of indigenous people in the United States with which the United States Congress has not sought to right historic injustices, mistreatment and loss of land.

Felix Cohen, the leading Indian law scholar of all time, wrote in 1947 that "[t]oday we can say from the Atlantic to the Pacific our national public domain consists, with rare exceptions, of land that we have bought from the Indians." Cohen was proud that the United States, more than any other nation, had dedicated efforts to clearing the national ledger and the national conscience of transactions with Indians that resulted in acquisitions of land without compensation or for an inadequate price. Since Cohen wrote, hundreds of millions of dollars more have been paid to Native Americans for past unfairness. Nearly every recognizable group of American Indians has brought a monetary claim under the Indian Claims Commission Act, vast amounts of land and money have been distributed to Alaska Natives under the Alaska Native Claims Settlement Act, and several Eastern Indian tribes have recovered land and money under congressional legislation.

Why have Native Hawaiians been ignored? Why has the nation not sought to do justice for this last 125,000 Native Americans? I suggest that relatively recent statehood and lack of visibility account for the neglect experienced by Native Hawaiians. Alaska only achieved statehood a year earlier than Hawaii, but had the nation's need for oil not set economic and political forces into motion to press for its enactment, the Alaska Native Claims Settlement Act may not have been passed and Alaska Native claims still would be unsettled. The question is, lacking such an exigency, how soon the United States will come to grips with Hawaiian claims?

Some have attempted to explain away the failure to deal with Hawaiian claims by saying that there are significant differences between them and the claims of other Native Americans. They insist that Native Hawaiians are ethnically different from other Native Americans, that they have a different history, and that they lack any legally cognizable claims against the United States. I will address each of these apparent differences.

Ethnic Differences

It is true that Native Hawaiians are not American Indians. They came to these islands some 1,200 to 1,500 years ago from Eastern Polynesia, hundreds of years before the relatively recent arrival of European explorers. But special legal treatment has not been limited to a particular ethnic stock of Native Americans. Alaska Natives, for instance, include some people who are Indians but also include Eskimos and Aleuts, whose ethnic origins are totally different and arrival more recent. Legally they have been treated the same. Cohen, Handbook of Federal Indian Law 739 (1982). It is well established that Congress can define and treat a group of people as a "tribe" or as Native Americans within the special protection of the United States so long as that group has some ancestors who lived in what is now the United States before discovery by Europeans, and so long as the group is a **"people distinct from others." The Kansas Indians, 72 U.S. (5 Wall.)** 737, 755 (1867); Cohen, Handbook of Federal Indian Law 5, 94-95 (1982). The determination, unless it is totally arbitrary, lies solely with Congress. United States v Sandoval, 231 U.S. 28 (1913).

Historical Factors

It is sometimes argued that there are substantial historical differences that set Native Hawaiians apart from other Native Americans. Hawaiians have no reservations, no tribes, no treaties. But not all Indian tribes have reservations, were historically organized as tribes, or were parties to treaties with the United States. Many "tribes" really had no aboriginal political organization, but were organized in order to provide a vehicle with which Americans could deal in order to facilitate transfers of land. Many Indians never were fortunate enough to have any right to a reservation acknowledged to them and large numbers of Indian tribes never entered into any treaties. Most have nevertheless successfully brought claims against the United States with the consent of Congress. A dearth of treaties, lack of reservations, and absence of tribal status did not deter Congress in redressing Alaska Native claims. Indeed, there is much greater ethnic and cultural cohesion among Native Hawaiians who share a common Polynesian heritage and language than among Alaska Natives who represent diverse ethnic groups, numerous languages, and hundreds of communities.

In many ways, Native Hawaiians are similar to other Native Americans. Their history, while unique, has significant parallels to that of American Indians.

- Title to virtually all land in Hawaii is traceable to Hawaiian ownership.
- Hawaiians, like American Indians, have cultural reverence for the land; Hawaii has adopted as its state motto the ancient Hawaiian proverb which translates to "the life of the land is preserved in righteousness."
- Native Hawaiian people, like Indians, have become important parts of the dominant society, with many serving in the armed forces, being elected to public office and being productive citizens. Yet the typical Native American resists assimilation as "just another American citizen."

- a robust aboriginal culture survives among Hawaiians and among Indian tribes, more so than the rich cultures from throughout the world that have been more readily blended into the melting pot of America.

- A sad but true coincidence between Native Hawaiians and other Native Americans is the fact that they share dismal **statistics as to employment, education and health.**

The treatment of Native Hawaiians is one of the darker chapters of American history. The United States was an active participant in the dispossession and cultural erosion of Native people. Hawaii had a well developed political and social structure under which a unified kingdom had been functioning as a nation for almost a century before the islands were incorporated into the United States. A customary system of land tenure evolved into rights recognized by official actions of the Hawaiian Government by the time of substantial American involvement.

By 1890, foreigners, mostly Americans, had acquired over a million acres in Hawaii. They controlled another three-quarters of a million acres under leases procured at bargain rates from the government and the King. This was not the result of any direct action of the United States; it was the consequence of changes in the land laws of the Kingdom of Hawaii. But Americans were instrumental in bringing about those changes.

An event that had profound significance for Native Hawaiians was the overthrow of the Hawaiian monarchy in 1893. This action wrested all remaining government and crown lands from Hawaiian control and put them into the hands of a provisional government, eventually into the hands of the United States Government. The final years of the Hawaiian Kingdom were marked by substantial American influence, official and unofficial.

In 1887 an opposition group made up mostly of Americans sought to force King Kalakaua to abandon the pro-monarchy constitution and substitute for it a constitution that would reduce the King to a ceremonial figurehead with all power to reside in a cabinet that was responsible to the legislature. The King unsuccessfully sought United States protection from this powerful group. Instead of getting American help, he was forced to sign what became known as the "bayonet constitution." The bayonet constitution stripped the King of most of his power and imposed property ownership and income requirements for electors and candidates for public office, tying control of the Hawaiian Government to the planters and merchants. It allowed American and European males to vote even if they were not citizens, and effectively disenfranchised many Native Hawaiians. Thus, the Hawaiian Government was dominated by Americans. The new circumstances allowed the United States to renew a reciprocity treaty on the Hawaiian King and to take Pearl Harbor, long sought by it.

When Kalakaua attempted to regain some of his lost power, he was pressured to back down by American and European diplomats, reinforced by the presence of American military forces. His successor, Queen Liliuokalani, also met resistance when she tested her authority. With strong encouragement from Washington, D.C., a group opposed to the Queen sought annexation of Hawaii to the United States. The Annexation Club, a secret group, formed a "Committee of Safety." With assurances of support from the United States Minister the committee plotted the overthrow of the monarchy. On orders of the United States Minister American troops landed in Honolulu on January 16, 1893, according to plans devised by the insurrectionists. The American troops blockaded the Queen's palace from access to the government building and then allowed the insurrectionists to occupy the government building.

Even before the takeover of the Hawaiian Government was complete, the United States Minister recognized the new "Provisional Government as the de facto government of the Hawaiian Islands." The Queen was forced to abdicate but did so under protest and subject to a later review of the situation by the American Government. To insure order, the Marines took custody of the government building and raised the American flag over it.

The United States Minister triumphantly wrote to the Secretary of State shortly after the overthrow of the Hawaiian Government that "the

Hawaiian pear is now fully ripe, and this is the golden hour for the United States to pluck it." Within a few weeks delegates of the new government and the U.S. Secretary of State had negotiated a treaty of annexation and submitted it to the Senate.

Later, the United States reviewed the question of the American role in overthrowing the Hawaiian Government. An investigation revealed facts that led President Grover Cleveland to call for restoration of the monarchy. In a lengthy and eloquent message to Congress, the President observed that the overthrow was not "by the people of the islands." Rather "the Provisional Government owes its existence to an armed invasion by the United States." He concluded that the United States' role was opposed to established American foreign policy, to morality, and the principles of international law. Consequently, he said, the United States

> can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.

Acceptance of the annexation treaty was delayed by a Senate divided over its propriety or efficacy. A new President, William McKinley, favored the concept of annexation stating that "we need Hawaii just as much and a good deal more than we did California. It is manifest destiny." Several years later McKinley finally achieved enough support in the Senate to win approval for the annexation treaty submitted to him. Upon annexation, control of the crown lands and government lands which had been seized by the Provisional Government passed to the United States.

It may be argued that the Native Hawaiians' history is different in two important respects from that of other Native Americans. First, land was not acquired directly from them as a dependent group of aboriginal people but from a willing sovereign -- the Provisional Government of the Republic of Hawaii. Second, that the United States has never treated them as it has other Native Americans. Surely the United States' complicity in the overthrow of the Hawaiian Kingdom and subsequent behavior of the United States makes the first distinction illusory. As to whether federal actions for the past 90 years indicate that Native Hawaiians should be treated differently from other Native Americans. There are two responses. One is that there is indeed a history of executive and legislative actions that evidences some special concern for rights and needs of Native Hawaiians.

- Recognizing that ancient Hawaiian land tenure afforded all Hawaiians a beneficial interest in crown and government lands, Congress specified in the annexation resolution and in the Organic Act that public land laws would not apply to ceded lands. Instead it required that revenues from the lands be "used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes."

- In 1910 Congress recognized that deteriorating social and economic conditions of Native Hawaiians was related to the loss of the Hawaiian land base and the associated culture and amended the Organic Act to ease the ability of Native Hawaiians to take up homesteads under an 1895 law of the Republic of Hawaii.

- The Hawaiian Homes Commission Act was passed in 1921 setting aside some 200,000 acres of public lands for Native Hawaiian homesteads in order to "rehabilitate" Native Hawaiians. Unfortunately the lands were poor, largely unsuitable for farming and lacking in irrigation water. Many of the lands were actually used for ordinary government purposes and the program was notoriously maladministered. In many ways the Hawaiian Homes Commission Act operated similarly to the General Allotment Act which distributed Indian tribal lands in severalty among individual Indians.

- The Hawaii Statehood Act in 1959 in section 5(f) obligated the state to hold lands entrusted to it and the income from them "as a public trust for the support

> of the public schools. . . ., for the betterment of the condition of native Hawaiians. . . ., for the development of farm and home ownership on as widespread basis as possible, for the making of public improvements, and for the provision of lands for public use."

- More recently, Congress has included Native Hawaiians as beneficiaries in some acts providing services to **Native Americans** such as the **Native American Programs** Act of 1975.

Each of these examples has fallen short of its modest goals; special needs of Hawaiians have been partially recognized but the laws and programs have been inadequate and ineffectual. Nevertheless, the special status of Hawaiians is signaled by a history of particularized treatment under federal law.

Some have asserted that the few isolated examples of recognition of special rights in Native Hawaiians are insufficient legal recognition of those rights and therefore Hawaiians are not to be treated in any special way under federal law. The argument that disregard in the past should relieve the United States of any future obligation or concern for Native Hawaiians or should divest Native Hawaiians of rights they might otherwise have is a curious one. When a similar argument was made about the rights of a tribe of American Indians, a federal appeals court recently said that to accept the argument

> would be enshrining the rather perverse notion that traditional rights are not to be protected in precisely those instances when protection is essential, i.e., when a dominant group has succeeded in temporarily frustrating the exercise of those rights. We prefer a view more compatible with the theory of the nation's founding: rights do not cease to exist because a government fails to secure them. See the Declaration of Independence (1776).

Mescalero Apache Tribe v New Mexico, 630 F. 2d 724 (10th Cir. 1980).

Legal Basis of Claims

Finally it has been contended that Native Hawaiians have no legal right to assert a claim against the United States. This proposition is, at best, unremarkable. It simply misses the point. The question has never been whether Native Hawaiians already have a legally cognizable claim to reparations. Rather it is whether the circumstances are appropriate for Congress to provide, through statutory enactment, a remedy for past harms attributable to the United States. The question is not whether a law now exists to provide that remedy. There is, of course, no such law. Failing an Act of Congress Native Hawaiians, just like other Native Americans, are without a remedy. This is because sovereign immunity protects the United States from suit; if the United States were vulnerable to suit, there would be no cause of action cognizable on the courts; if there was a cause of action, the passage of time may mean that the statute of limitations or laches would bar the claim. These barriers must be removed by Congress.

The true issue is whether equity and justice should move Congress to seek a remedy and what that remedy should be. This is precisely the question Congress was called upon to answer when it considered scores of special acts allowing tribes to sue the United States, when it debated the wisdom of the Indian Claims Commission Act, when it deliberated on the Alaska Native Claims Settlement Act.

Before 1946 Congress, on a case-by-case basis, authorized Indian tribes to bring actions in the Court of Claims. Beginning in 1836 Congress passed 142 such acts to give tribes a forum for their claims. Special jurisdictional acts typically were limited to a single tribe or band of Indians and the permissible bases of claims were specifically limited, such as to claims arising to land taken under a particular treaty, tort claims, breach of contract, and breach of quiet enjoyment.

Because the acts provided for only limited relief and proof of aboriginal title was usually held inadequate to support a taking of tribal land, many claims were not redressed. Furthermore, Congress tired of dealing with so many individual claims.

Comprehensive Indian claims legislation was passed in 1946 when the Indian Claims Commission Act established an administrative forum to hear and decide a wide variety of claims. 25 U.S.C. §§70 - 70v-3. The Act recognized many types of claims not known before as well as claims grounded in the traditional common law, statutes or equity that had been unavailable to Indians because they were barred by sovereign immunity or the statute of limitations. New bases for relief included, for instance, claims that would result if "treaties, contracts or agreements . . . . were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact . . . .," claims for taking of lands without necessity of proving recognized title, and all other claims "not recognized by any existing rule of law or equity" based on general principles of "fair and honorable dealings." Successful claims were brought where the government unintentionally disposed of tribal land, used it or granted it to a state, another tribe or a private individual. Mismanagement or lack of protection of Indian land or other resources by the United States resulted in judgments for many tribes. The goal of Congress was to do justice unrestrained by crabbed rules and technicalities.

When Congress passed the Alaska Native Claims Settlement Act it did not reach the question of the nature and extent of the Natives' aboriginal claims. Hearings were held on the subject but expedience and equity moved Congress to award relief, unfettered by elaborate legal arguments or neat distinctions.

The remedies and approaches to the claims of Alaska Natives or Indians have not been without problems or legal complications. But in each case Congress has determined the legal framework based not on some preconceived notion of legal right or what had been the limits of cognizable claims in another situation. The question has always been what seems appropriate to Congress, given prevailing notions of American fairness and American justice. That is the question to be asked concerning Native Hawaiian claims.

In an otherwise comprehensive and enlightening report, the Native Hawaiian Study Commission last year included an unhelpful and misleading analysis of the claims of Native Hawaiians. The analysis went to great pains to discover that there is no legal authority for claims to be brought by Native Hawaiians against the United States. What was needed was an historical comparison of how the United States has dealt with Native Hawaiians and their lands with the circumstances that have led Congress to enact legislation allowing remedies to other Native Americans. Had such an analysis been made, the conclusion would be unavoidable that:

- Native Hawaiians are a distinct group of aboriginal people in the territory of the United States having a common heritage and cultural ties to the land;

- Native Hawaiians were once stewards of all the land in what is now the state of Hawaii and historically the land was held for the benefit of all;

o most of the land in Hawaii that is now in federal, state or private hands was obtained from Native Hawaiians without compensation or for unconscionably low prices;

o the United States Government was intimately involved in political and economic affairs that resulted in disposition of lands from the Hawaiians and erosion of their culture;

o the federal government from the start has assumed responsibilities and accepted obligations of trust toward Native Hawaiians;

o the programs and efforts of the United States to deal with Native Hawaiians have been largely unsuccessful;

o social and economically, Native Hawaiians are in a desperate condition and in need of assistance.

These are the ingredients of a federal claim by Native American people. They track closely the elements that have led Congress to come to the aid of other aboriginal people. It is the obligation of the federal government to address the problem; it is a national problem that should not be masked by some superficial differences in history, by a distorted and parsimonious legal analysis, or by the feel of contentment that this land and its people radiate through their warmth and beauty.

I cannot believe that the people of the United States will leave claims of Native Hawaiians permanently unredressed. But how much longer should Hawaiians be required to wait? Several generations have already passed without the satisfaction of American justice. Once informed of the facts, Congress should take deliberate action to seek means for remedying past injuries to Native Hawaiians. Presumably a remedy would involve some combination of land and money coming under the control of Native Hawaiians. There are many issues and details that need to be worked out and it is not for me to suggest what is the most appropriate approach. It will take considerable deliberation, imagination, and compromise to reach a final claims settlement package that fits the cultural and social needs of Hawaiian people. There is much to do to develop the claims settlement package, and thus the inquiry should rapidly turn from the worthiness of Native Hawaiian claims to the approach that our nation should take to dealing with those claims.

Senator MATSUNAGA. Thank you very much, Mr. Getches, for your most enlightening presentation. Thank you. We certainly appreciate your coming all the way from Denver.

We have been scheduled to go until 12. We have now already exceeded by 15 minutes. We will now recess for lunch until 2 o'clock. But before we do that, Dr. King, you have a copy of a written statement which we could have for the record?

Dr. KING. Yes, I turned it in.

Senator MATSUNAGA. OK. If those of you who will be testifying can leave copies of your statement at the front desk, we'd certainly appreciate it, because we would want your statement included in the official record of these herings.

With this suggestion, I clear the committee in recess until 2 o'clock.

[A recess was taken until 2 o'clock.]

Senator MATSUNAGA. The committee will please come to order. As indicated earlier this morning, the committee will very much appreciate if those wishing to testify would turn in copies of their written statements at the front desk, if you have not yet done so.

I find now my staff tells me that we have over 60 witnesses to testify, which means that if we permit witnesses to go beyond the 5-minute limit some of you may need to stay here until midnight. I don't know whether they're going to allow us to stay here until midnight. So I many need to ask you to please confine yourself to the signal here. After 5 minutes, when you hear the bell sound, if you will be so kind to summarize and finish with a minute after that, we'd certainly appreciate it. There are so many after you wanting to testify.

Our first witness this afternoon will be the associate anthropologist of the Bishop Museum, Mrs. Marion Kelly. Are you here, Marion? Not here. We'll go to the next one.

Our next witness will be the director of the Native Hawaiian Legal Corp., Ms. Melody MacKenzie. Are you here, Melody? Here we are.

STATEMENT OF MELODY K. MacKENZIE, DIRECTOR, NATIVE HAWAIIAN LEGAL CORP.

Ms. MACKENZIE. Senator Matsunaga, Representative Heftel, members of the Committee on Energy and Natural Resources, I'm Melody Kapilialoha MacKenzie, director of the Native Hawaiian Legal Corp., a public interest law firm providing legal services to native Hawaiians. We're funded in part by a grant from the Office of Hawaiian Affairs and in part by a grant from the national Legal Services Corporation. One of the areas we are specifically charged with addressing is that of reparations and restitutions to the Hawaiian people.

Senator MATSUNAGA. Melody, he may look like Congressman Heftel, but he's Congressman Akaka.

Ms. MACKENZIE. I'm sorry. In addition to participating as a member of OHA's ad hoc committee on reparations, I prepared OHA's position paper on reparations and restitution which was submitted to the Native Hawaiians Study Commission. I've also written several other articles and papers in response to the draft report of the Native Hawaiians Study Commission, and with Professor Van Dyke attended the final meetings of the Study Commission in Washington, DC.

Today, I specifically want to address some of the issues raised by Patrick Hanifin which were cited extensively in volume I of the Study Commission's final report. Indeed, the article Mr. Hanifin wrote seems to have been embraced wholeheartedly by the majority members of the Commission, the basic thesis of Hanifin's article is that most Hawaiians owned no lands in 1893 and had no political power. Consequently, they lost nothing as a result of the overthrow of the Hawaiian Kingdom. He argues that since Hawaiians had nothing, they had nothing to lose, and could claim nothing for damages. Moreover, he contends that those who might have had political power are now dead and since there is no moral right to inherit political power, the losers' descendants have no moral right to reparations.

There is a deceptive simplicity and facility in Hanifin's reasoning that may appear appealing, but it's ironic that while purporting to discuss the moral issues involved, the article presents a narrow, reductionist legal analysis and completely avoids the issues of conscience. Hanifin establishes both arguments which he easily counters, thereby giving the illusion that the native Hawaiian claims for reparations and restitution lacks substance.

For instance, he finds it necessary to make the argument that reparations would not be owed to native Hawaiians for the loss of private lands. Well, native Hawaiians, as far as I know, have not advanced claims for loss of private lands, and consequently, his argument on this point is irrelevant.

Turning to the crown lands, Hanifin concludes that since the Queen was entitled merely to the income from the crown lands, all she lost in 1893 was that income. The right to the income is the only right which he believes may be compensable and determines that the rights died with the Queen. He argues that since there is presently no monarch, because there is no Hawaiian Kingdom, no Hawaiian is entitled to compensation for loss of crown lands.

Hanifin totally misapprehends the function of the Crown and the meaning of the crown lands. Rather than asking whether there are individual Hawaiians who would be entitled to compensation for loss of the crown lands, it would be more appropriate to look at the office to which the crown lands were inseparably attached. That office was one of leadership and power for the Hawaiian people. The Crown and the crown lands which supported the office represented a form of government consented to by the Hawaiian people. The crown lands were lands which benefited the dignity of the native Hawaiian monarchs and were a unique symbol of the Hawaiian monarchy. As the U.S. Court of Claims noted, the crown lands belonged to the office and not to the individual. The crown lands were the resourceful method of income to sustain, in part at least, the dignity of the office to which they were inseparably attached. The crown lands were an integral part of the Hawaiian social and political structure and they represented a traditional and common source of wealth for the people as a whole.

We cannot, as Hanifin has attempted to do, divorce the legal question from the historical, ethical, and moral issues involved.

Next, Hanifin turns to a discussion of Government lands and concludes that since the Hawaiian Government owned the Government lands in 1893, no individual Hawaiian has any claim for reparations due to their supposed theft. Again, Hanifin fails to examine who or what gave the Government its legitimacy and its existence. Prior to 1893, the Hawaiian Government received its legitimacy from a social and cultural structure which was rooted in a view of the world and how the world was operated. It was Hawaiian at its very essence. Although it was influenced by and had adapted some Western political institutions, the Hawaiian Government—the form of Hawaiian Government as a constitutional monarchy—represented the Hawaiian identity. Hanifin states that the change in the form of government in 1893 from the Monarchy to the Provisional Government, and in 1894 from the Provisional Government to the Republic, did not alter the ownership of the Government land by the Government of Hawaii. This is a truism of no consequence. Undoubtedly, the Government of Hawaii continued to own the Government lands until 1893; but the Government of Hawaii at its very essence was radically altered by the events of 1893, and that's really the whole point.

Hanifin goes into a long discussion of aboriginal and recognized title. And although that argument has been advanced, I don't think it would be particularly helpful at this point to go over it again. As David Getches pointed out this morning, there are similarities. The real point is whether there is a claim from native Hawaiians which is based on a unique factual situation here.

I do want to make one brief comment on Hanifin's treatment of the Constitution of 1840. That Constitution set forth principles upon which the constitutional monarchy was founded and stated: Kamehameha I was the founder of the kingdom, and to him belonged all the land from one end of the islands to the other, though it was not his own private property, it belonged to the chiefs and people in common, of whom Kamehameha I was the head and had the management of the landed properties.

Hanifin suggests that since the Constitution of 1840 was superseded by subsequent constitutions, common rights in the land were extinguished. However, subsequent constitutions did not need to restate the historical source of property rights. That source did not change. Moreover, as Hanifin admits, the principles adopted by the board of land commissioners were the authoritative interpretation of the common rights under the old land system and were the foundation for the new land tenure system. These principles clearly recognized that there were three classes of persons holding rights in the land—the king, the chiefs, and the people.

Hanifin next turns to the question of whether the Hawaiian Government held the Government lands in trust for Hawaiians. Predictably, he concludes the Government did not. His conclusion is based on the fact that there are no reported judicial decisions of that period in which a Hawaiian successfully challenged the Government's actions with regard to Government lands. Let me respond to that argument in several ways.

First, the absence of judicial decisions prove nothing. Second, and more importantly, in looking at whether the Government lands were held in trust, one must look to the historical and cultural relationship in Hawaiian society of the people and the land. Prior to the Mahele of 1848, no concept similar to fee simple ownership existed. Neither the king, the chiefs, nor the people owned the land in the Western sense. Instead, the land was seen as belonging to the gods, although each strata of Hawaiian society had certain use rights of land.

After the islands were united, this concept, essentially a trust concept, was articulated in the Constitution of 1840. In 1848, when Kamehameha III gave the Government lands to the Government of Hawaii, he did so by setting them apart forever to the chiefs and people of my kingdom.

The Hawaiian Government held title to the Government lands for the benefit of the chiefs and people and although the trust may not have been as clearly articulated as we would want, we should keep in mind that that concept was so totally a part of Hawaiian culture that it was an unspoken assumption.

In 1898 when both the Government and crown lands were ceded in fee to the United States, there is a specific recognition of this trust relationship in the Joint Resolution of Annexation. That recognition of the trust relationship was confirmed in the 1900 Organic Act and in section 5(f) of the 1959 State Admission Act. And it continues to be a source of the State's trust duty to native Hawaiians as recognized in the 1978 amendment to the State constitution.

Although I have a bit more testimony to go, I will, in deference to the other people who will testify, just conclude by saying that the issue here is one really of human rights. The law of human rights is based on the principle that every people have the right to exist, to be left alone, to be a State. At the present time, industrialized nations hold the balance of world power and so believe themselves to be the source of civilized wisdom. But over the years, their ability to remain free and independent will depend upon their treatment of other nations and other people, including aboriginal people. No mere physical power has demonstrated any particular permanence on this Earth; ideas tend to outlive governments and the idea of human freedom is inherent and inextinguishable. At its heart, that's what this claim is all about, and we ask that you give our claim the full measure and consideration it deserves.

Thank you.

[The prepared statement of Ms. MacKenzie follows:]

U.S. Senate Committee on Energy
and Natural Resources

Testimony
of
Melody K. MacKenzie
Director
Native Hawaiian Legal Corporation
April 16, 1984

Senator Matsunaga and Members of the Committee on Energy and Natural Resources:

Thank you for this opportunity to give my remarks on the Final Report of the Native Hawaiians Study Commission. I am Melody Kapilialoha MacKenzie, Director of the Native Hawaiian Legal Corporation, a public interest law firm providing legal services to Native Hawaiians. NHLC is funded in part by a grant from the State Office of Hawaiian Affairs and in part by a grant from the national Legal Services Corporation. One of the areas we are specifcially charged with addressing is that of reparations and restitution to the Hawaiian people. In addition to participating as a member of OHA's Ad Hoc Committee on Reparations, I prepared OHA's position paper on reparations and restitution which was submitted to the Native Hawaiians Study Commission. I have also written other articles and papers in response to the draft report of the Native Hawaiians Study Commission, and Professor Jon Van Dyke and I attended the final meetings of the Study Commission in Washington, D.C.

Today, I specifically want to address some of the issues raised in an article by Patrick Hanifin ("Hawaiian

Reparations: Nothing Lost, Nothing Owed") which was cited extensively in Volume I of the Study Commission's Final Report. Indeed, the article seems to have been embraced whole-heartedly by the majority members of the Commission. Ramon Lopes-Reyes has responded to Hanifin in an article examining the psycho-cultural effect of the overthrow of the monarchy and subsequent assimilation attempts on Native Hawaiians and Hawaiian culture.

However, I would like to respond to some of the legal arguments made by Mr. Hanifin. The basic thesis of his article is that most Hawaiians owned no lands in 1893 and had no political power; consequently they lost nothing as a result of the overthrow of the Hawaiian Kingdom. Since Hawaiians had nothing, they had nothing to lose, and could claim nothing for damages. Moreover, he contends, those who might have had politial power are now dead and "since there is no moral right to inherit political power, the losers' descendants have no moral right to reparations."

There is a deceptively appealing simplicity and facility in Hanifin's reasoning. But it is ironic that while purporting to discuss the moral issues involved, the article presents a narrow, reductionist legal analysis and completely avoids the issues of conscience. Hanifin neglects to consider the jurisprudential basis for reparations and restitution and mistakes the narrow form of a legal right for the substance of the concept. He establishes bogus arguments which he easily counters, thereby giving the illusion that the Native Hawaiian claim for reparations and restitution lacks substance.

For instance, Hanifin finds it necessary to make the argument that reparations would not be owed to Native Hawaiians for the loss of private lands. Native Hawaiians, as far as I know, have not advanced a claim for loss of private lands. Consequently, Hanifin's discussion on this point is totally irrelevant.

Turning to the Crown lands, Hanifin concludes that since the monarch was entitled merely to the income from the Crown lands, all Lili'uokalani lost in 1893 was that income. The right to income is the only right which he believes may be compensible and he determines that the right died with Lili'uokalani. He argues that since there is presently no monarch (because there is no Hawaiian Kingdom), no Hawaiian is entitled to compensation for loss of the Crown lands.

Hanifin totally misapprehends the function of the Crown and the meaning of the Crown lands. Rather than asking whether there are individual Hawaiians who would be entitled to compensation for loss of the Crown lands, it would be more appropriate to look at the office to which the Crown lands were inseparably attached - that office was one of leadership and power for the Hawaiian people. The Crown and the Crown lands which supported that office represented a form of government consented to by the Hawaiian people. The Crown lands were lands which benefited the dignity of the Native Hawaiian monarchs and were a unique symbol of the

Hawaiian monarchy. As the U.S. Court of Claims noted, the Crown lands belonged "to the office and not to the individual... The reservations made [by Kamehameha III in 1848] were to the Crown and not the King as an individual. The Crown lands were the resourceful method of income to sustain, in part at least, the dignity of the office to which they were inseparably attached." Liliuokalani v. U.S., 45 Ct. Claims 418, 427-28 (1910). The Crown lands were an integral part of the Hawaiian social and political structure and they represented a traditional and common source of wealth for the people as a whole. Hawaiians, as a group of people, suffered because their common interest in the Crown lands, as subjects of the Hawaiian Kingdom and as beneficiaries of the office of the Crown, was lost. We cannot, as Hanifin has attempted to do, divorce the legal questions from the historical, ethical and moral issues involved.

Next, Hanifin turns to a discussion of Government lands. He concludes that since the Hawaiian Government owned the Government lands in 1893, no individual Hawaiian had any claim for reparations due to their supposed theft. Consequently, no Hawaiian today has a valid claim for reparations.

Again, Hanifin fails to examine who or what gave the Government its legitimacy, it's existence. Prior to 1893, the Hawaiian Government received its legitimacy from a social and cultural structure which was rooted in a certain view of the world and how the world operated. It was Hawaiian at its very essence. Although it was influenced by and had adapted some Western political institutions, the Hawaiian government - the form of Hawaiian government as a constitutional monarchy - represented the Hawaiian identity. Hanifin states that the change in the form of government - in 1893 from the Monarchy to the Provisional Government and in 1894 from the Provisional Government to the Republic - did not alter the ownership of the Government land by the government of Hawaii. This is a truism of no consequence. Undoubtedly, the government of Hawaii continued to own the Government lands until 1898; but the government of Hawaii at its very essence was radically altered by the events of 1893. That's really the whole point.

Hanifin also discusses aboriginal title and recognized title. It is obvious that the Native Hawaiian claim is unique and does not neatly fit into law developed to address the claims of other native American groups. Although arguments based on aboriginal title and recognized title have been advanced by those adovcating reparations, it has always been done with the caveat that these theories are, at best, an analogy and that every historical situation is different. The question is, do the facts regarding the Native Hawaiian claim establish their own unique case, just as the facts regarding the Alaskan native claim or the Japanese-American claim provide their own unique case. The debate as to whether Native Hawaiians had aboriginal title and/or recognized title to Crown and Government lands in 1893 could be argued indefinitely. But rather than take up this committee's time with what may be a fruitless debate, I have attached remarks which I prepared on aboriginal and recognized title refuting the assumptions made by the Native Hawaiians Study Commission Draft Report.

I want to make one brief comment about Hanifin's treatment of the Constitution of 1840. That Constitution set forth the principles upon which the Constitutional Monarchy was founded and stated:

> Kamehameha I was the founder of the kingdom, and to him belonged all the land from one end of the Islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I was the head, and had the managment of the landed property.

Hanifin suggests that since the Constitution of 1840 was superceded by subsequent constitutions, common rights in the land were extinguished. However, subsequent constitutions did not need to restate the historical source of property rights. That source did not change. Moreover, as Hanifin admits, the principles adopted by the Board of Land Commissioners were the authoritative interpretation of the common rights under the old land system and were the foundation for the new land tenure system. Those principles clearly recognized that there were three classes of persons holding rights in the land - the king, the chiefs, and the people.

Hanifin next turns to the question of whether the Hawaiian Government held the Government lands in trust for Hawaiians. Predictably, he concludes that the government did not. His conclusion is based on the fact that there are no reported judicial decisions of that period in which a Hawaiian successfully challenged the Government's actions with regard to Government lands. Let me respond to Hanifin's argument in several ways:

First, the absence of judicial decisions proves nothing. Second, and more importantly, in looking at whether the Government lands were held in trust, one must look to the historical and cultural relationship in Hawaiian society of the people and the land. Prior to the Mahele of 1848 no concept similar to fee simple ownership existed. Neither the king, the chiefs, nor the people owned the land in the Western sense. Instead the land was seen as belonging to the gods, although each strata of Hawaiian society had certain use rights of the land. The ali'i managed the land while the people worked the land for the common good. After the islands were united, this concept, this trust concept, was articulated in the Constitution of 1840. In 1848, when Kamehameha III gave the Government lands to the Government of Hawaii, he did so by setting them apart "forever to the chiefs and people of my Kingdom". The Hawaiian Government held title to the Government lands for the benefit of the chiefs and people and although the trust may not have been as clearly articulated as we would want, we should keep in mind that that concept was so totally a part of the Hawaiian culture that it was an unspoken assumption. In 1898 when both the Government and Crown lands were ceded in fee to the United States, there is a specific recognition of this trust relationship in the Joint Resolution of Annexation. That recognition was confirmed in the 1900 Organic Act and in Section 5(f) of the 1959 State Admission Act. It continues to be the source of the State's trust duty to Native Hawaiians as recognized in the 1978 amendment to the State Constitution.

Hanifin's analysis of claims arising from loss of political power, is equally flawed. He appears to equate political power with the power to vote and thereby misses the crux of the claim. What was lost at the time of the overthrow was not merely political power in the narrow sense of the power to vote, or the power to appoint cabinet ministers, or the power to veto legislation. Prior to the overthrow in 1893, Native Hawaiians were citizens of an organized, self-governing nation whose status as an independent sovereign was recognized by other nations. This basic right of nationhood, the right to exist as an independent, self-governing nation, was violated by American intervention in the internal affairs of the Hawaiian Kingdom.

Hanifin presents a rather amazing series of statistics to prove that Hawaiians had very little political power, meaning voting power, at the time of the overthrow of the government. He also argues that the political power which Hawaiians did have was morally improper because it was disproportionate to their numbers in the general population. Consequently, he concludes Hawaiians had no moral right to reparations for the loss of their political power.

Yet, as Hanifin points out, many of the restrictions which disallowed voting by most Hawaiians and other racial groups were a result of the 1887 Constitution, a constitution which was forced upon Kalakaua by that same group of white businessmen who collaborated in overthrowing the Kingdom of Hawaii. Hanifin's reasoning in this section is entirely specious. The 1887 Constitution, for instance, allowed white aliens to vote but did not allow Oriental aliens to vote. This provision didn't really benefit Native Hawaiians at all and it was not promulgated because of Native Hawaiians - it was promulgated because white aliens were trying to take political control of the government. Native Hawaiians would have benefited more in terms of voting powerif neither white nor Oriental aliens could vote. In determinine what the "morally proper" voting strength of Hawaiians should have been in 1893 it would be more appropriate to exclude both white and Oriental aliens and to drop all restrictions which precluded those who did not have a certain amount of property from voting.

Hanifin concludes that Hawaiians today have exactly the same political rights as everyone else - one person, one vote. That is quite true, and if Hawaiians wanted to be part of the American system in 1893, and had chosen to be part of the American system in 1893 or 1898, there would be no problem and there would be no issue as to reparations. However, the crux of the whole matter is that Hawaiians never had a choice in the matter. By avoiding that issue, Hanifin's analysis is fatally flawed.

Hanifin states that no one has a moral right to inherit political power and that inheritance of political power is the principle of absolute monarchy, of aristocracy and or racism. It has no place in a democratic society. The claim for reparations is not based on a few Native Hawaiians having lost political power in 1893. The claim for reparations and restitution is based rather on Native Hawaiians, as a people, having lost sovereignity in 1893. I would submit that the imposition of a foreign culture and political structure on a native people likewise has no place in democratic society.

A major fault in Hanifin's analysis is that it evades examining American intervention in the internal affairs of the Hawaiian kingdom. As I've argued above, political power is more than a mere vote - it is the ability to retain ones culture and the ability of a people to influence the events which affect them. Perhaps rather than ask the questions which Hanifin has posed in his article it might be more appropriate to ask what could have happened if the United States had not intervened in the internal affairs of the Hawaiian kingdom.

For instance, would the Constitutional Monarchy have continued? Would the Crown lands or the Government lands been opened up for homesteading for the Hawaiian people? Would the form of the Hawaiian government evolved into one in which the same rights now available to Hawaiians - one person, one vote - were extended to all citizens? Might positive law have developed so that the trust impressed upon the Crown and Government lands been clearly articulated? The real tragedy is that we will never know the answers to these questions and the primary reason we will never know is precisely why we are here today. Even the Native Hawaiians Study Commission Majority Report found that there was intervention by American agents in the overthrow of the Hawaiian Kingdom. Although the majority report is not willing to admit United States responsibility, it is undisputed that American agents were involved. It is that involvement and intervention which Native Hawaiians have protested and sought reparations for these many, many years. To some degree, Native Hawaiians ask that the United States make reparations for foreclosing a certain kind of future to native Hawaiians - that future involved the ability to exist and make decisions as a people.

The law of human rights is based on the principle that every people has a right to exist, to be left alone, to be a state. At the present time, industrialized nations hold the balance of world power and so believe themselves to be the source of civilized wisdom. But over the years their ability to remain free and independent will depend upon their treatment of other people and nations. No mere physical power has demonstrated any particular permanence on this earth; ideas tend to outlive governments and the idea of human freedom is inherent and inextinguishable. In the past the United States has made attempts to redress the wrongs done to its native people. Despite the attempts of Native Hawaiians to give formal recognition to their long standing claim, Congress has never taken the final step of repairing the injuries suffered by native Hawaiians. We ask that you give our claim the full measure and consideration it deserves.

Thank you.

EXCERPTS FROM

COMMENTS ON
THE NATIVE HAWAIIAN STUDY COMMISSION
DRAFT REPORT

Submitted To
The Office of Hawaiian Affairs
By The Native Hawaiian Legal Corporation

Melody K. MacKenzie
Staff Attorney
November 1982

III. EXAMINATION OF PART II, CHAPTER III

In its original submission to the Native Hawaiian Study Commission, OHA argued that the Native Hawaiian claim for restitution and reparations is founded on two basis - the loss of sovereignty and the loss of land. In structuring its arguments, OHA discussed certain principles of Indian law with the hope that the Commission would draw appropriate analogies to the claim of Native Hawaiians. The NHSC Draft Report, however, draws the narrowest possible conclusions from those principles and at every turn seeks to foreclose a claim. It is obvious that the claim of Native Hawaiians is unique and does not neatly fit into law developed to handle the claims of Indian tribes. However, what is most disheartening is that the Commission has chosen to conclude that there is no legal basis for the claim without acknowledging the validity of reparations and restitution for the loss of sovereignty and land. The NHSC Draft Report essentially states that Congress is not compelled to recognize the Native Hawaiian claim, that no existing constitutional or statutory provision compels reparations or restitution. The fact that there is no mechanism by which Native Hawaiians can assert their claim does not undermine the validity of the claim.

The Draft Report repeatedly points to the statute of limitations provision of the Indian Claims Commission Act to reach the conclusion that a Native Hawaiian claim is barred because it was not filed by 1951. The Draft Report merely states the obvious. The Indian Claims Commission Act was created to provide a mechanism to adjudicate claims of identifiable Indian groups, those claims must have been filed by 1951. While the Indian Claims Commission Act has precedential value, no one has seriously argued that Native Hawaiians can file a claim under that Act as it presently exists. Thus, the NHSC Draft Report's continuous references to the Indian Claims Commission Act are, for the most part, superfluous and irrelevant.

The NHSC Draft Report also takes great pains to show that the claims of Alaskan Natives differ so substantially from the claims of Native Hawaiians that the Alaska Native Claims Settlement Act provides no precedent. Undoubtedly, the reasons compelling passage of the Alaska Native Claims Settlement Act and the legal situation of Alaska Natives differs significantly from that of Native Hawaiians. The treaties and acts applying to Alaskan Natives and Native Hawaiians are totally different. But to ignore the evident parallels and argue that there are no analogies at all is misleading. The NHSC Draft Report ignores the research done in 1973 by the Library of Congress Congressional Research Service comparing the Alaskan Native and Native Hawaiian Claims.[48] That report concluded that there were at least three possible similarities between the two claims:

1) In both situations the United States acquired land without the consent of the Native people;
2) In both situations viable aboriginal title claims

could be asserted; and

3) Both the Alaska and Hawaii Organic Acts left open the possibility of future land claims.[49]

The failure to examine existing research on this topic results in an incomplete and inaccurate analysis.

While the most significant objection to Chapter III is its adversarial tenor, the following comments highlight certain specific omissions and erroneous assumptions.

A. Aboriginal Title

A major premise for the NHSC Draft Report's conclusion that Native Hawaiians have no basis for a claim for loss of aboriginal title is that Native Hawaiians did not, at the time aboriginal title was lost, consitute a "single landowning entity."[50] The Draft Report, however, makes several false assumptions about the nature of land title in Hawaii prior to and after the Mahele. Prior to the Mahele, no concept similar to fee simple ownership existed. Neither the king, the chiefs, nor the people "owned" the land in the Western sense. Instead, the land was seen as belonging to the gods, although each strata of Hawaiian society had certain use rights in the land. The ali'i managed the land while the people worked the land for the common good. After the islands were united, all of the land belonged to Kamehameha I, "although it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I was the head, and had the management of the landed property."[51] Thus, prior to the Mahele, Native

Hawaiians owned the land in common, as a group. After the division of the interests of people, chiefs, government, and crown, the Kingdom of Hawaii clearly held title to Government Lands for the benefit of the chiefs and people. Similarly, Crown Lands, after the Act of 1865 making them inalienable, were held by the Hawaiian government.

The Hawaiian Kingdom, a politically cohesive unit composed of and accepted by Native Hawaiians, was the "single landowning entity" which held aboriginal title to Government and Crown lands. The Draft Report's primary fallacy comes in drawing a distinction between Native Hawaiians and their governing body, the government of the Hawaiian Kingdom.[52] That government represented the people - Native Hawaiians - and it is that government which is the "single landowning entity" required under the aboriginal title test.

Native Hawaiians advance no argument as to "constructive possession" of Government and Crown Lands. Such a constructive possession argument is irrelevant once it is accepted that the single land-owning entity was the Hawaiian government itself. Similarly, arguments that the Hawaiian government extinguished the aboriginal title of Native Hawaiians by the Mahele of 1848 or the Kuleana Act of 1850 have no validity since title to the Government and Crown Lands were confirmed in the native government by the Mahele and subsequent actions.

Native Hawaiians have clearly met other portions of the test for aboriginal title. For centuries prior to Western contact, Native Hawaiians used and occupied the lands of Hawaii and exercised collective rights in the land. After Western contact, and after the Mahele, much land was converted to individual fee-simple ownership. However, the Government and Crown Lands were maintained as lands held by the Hawaiian Kingdom for the chiefs and people in common. One indication of the collective rights in these lands was the specific recognition of traditional native rights of gathering and access on Government and Crown lands.[53] Further, the exact boundaries of these lands can be ascertained by referring to the original Mahele Book and documents, as well as documents substantiating subsequent transactions involving Government and Crown lands.[54]

As far as the contention that the United States government did not extinquish aboriginal title is concerned, in 1898 the federal government gained title to approximately 1.75 million acres of aboriginal land through the annexation process. The Republic of Hawaii would not have been able to cede these lands to the United States but for the actions of an agent of the United States and the use of American troops five years earlier. The intervening five years did not extinguish aboriginal title to Government and Crown lands since only voluntary abandonment of those lands by Native Hawaiians would divest Native Hawaiians of aboriginal title.[55] Under traditional principles of Indian law, forcible dispossession by non-natives, as in the case of Native Hawaiians, is not voluntary abandonment and does not extinguish aboriginal title.[56] Thus, Native Hawaiians continued to hold aboriginal title to Crown and Government Lands until such title was extinguished in 1898 by the Joint Resolution of Annexation. Moreover, even if Native Hawaiians were deprived of aboriginal title in 1893 by the establishment of a Provisional Government, under applicable principles of Indian law, the United States has been held liable for actions of third parties depriving aboriginal people of their land rights, if the Untied States aided in or sanctioned the actions of those third parties.[57] Surely, that was the case in Hawaii where the United States gave support and military protection to the Provisional Government.

Finally, while no existing law compels the United States to provide reparations or restitution for the loss of aboriginal title, in fact the federal government has done so in the past. As previously discussed, both the Indian Claims Commission Act and the Alaskan Native Claims Settlement Act provide precedents for such an action.[58]

B. Recognized Title

While the concept of recognized title as developed in Indian law is not totally applicable to the Native Hawaiian claim, the NHSC Draft Report neglects to examine the recognized title claim raised in OHA's initial submission to the Commission.[59] In that study, OHA noted that the title which the Hawaiian Kingdom held to Government and Crown lands was a formal title, granted in accordance with the domestic laws of Hawaii. Unlike the situation with Indian tribes, the federal government did not "grant" title of the Crown and Government lands to the Hawaiian Kingdom. However, the federal government did recognize and acknowledge the existing government of Hawaii and the rights of that government to the territory within its domain.[60]

Contrary to the Draft Report's contention, Native Hawaiians do not claim that the Hawaiian Kingdom granted "recognized title" of the Government and Crown Lands to individual Native Hawaiians. Again, the NHSC Draft Report attempts to draw a distinction between Native Hawaiians and their legitimately constituted government, and views Native Hawaiians as a group separate from the government which represented them. However, as in the aboriginal title claim, Native Hawaiians assert that the government of the Hawaiian Kingdom was the native governmental entity holding recognized title to Government and Crown lands. The recognized title claim put in its simplest terms is that the United States, by recognizing the sovereignty and domain of the Hawaiian Kingdom, also recognized the legitimacy of that government's title to its own lands.

Moreover, it has been the consistent policy of the United States to respect property rights of native people recognized under prior governments. Congress and the courts have long respected grants to native peoples under the laws of another sovereign. The most important examples of native groups that have claims traceable in part to the laws of other sovereigns are the Pueblo and California Indians, whose claims rested on Spanish and Mexican law, and the Alaska Natives, claiming in part under Russian law.[61] In each case, Congress acted to establish a procedure to determine and confirm land titles.[62]

The NHSC Draft Report also argues that the acquisition of Crown and Government lands by the United States in 1898 did not constitute a taking within the meaning of the Fifth Amendment since, under the Joint Resolution of Annexation and Organic Act, these lands were to remain in the possession, use, and control of the Territorial Government.[63] This is clearly a misinterpretation of the Joint Resolution and Section 91 of the Organic Act. The Government and Crown lands were transferred to the United States in fee. Indeed, several early opinions of the U.S. Attorney General held that the Joint Resolution of Annexation vested title to the public property of Hawaii in the United States and only by its authority could those lands be disposed of.[64] Section 91 of the Organic Act is the mechanism by which the United States gave the Territorial Government the power to manage those lands. However, the fee title to those lands clearly remained in the United States as evidenced by Hawaii's Admission Act in which the United States ceded such title to the State of Hawaii.[65] Further, the Territorial Government itself was a creature of federal statute and in truth derived its powers solely from Congress.[66] Consequently, in 1898 the Government and Crown Lands were taken by Congressional authorization for a public purpose and the Fifth Amendment prohibition would apply.

C. Sovereignty

The NHSC Draft Report's conclusion that Native Hawaiians have no claim for loss of sovereignty because Hawaii was not part of the United States in 1893 is self-serving.[67] The sovereignty claim is based on the fact that the United States interfered in the internal affairs of an independent nation. Thus, the Native Hawaiian claim for loss of sovereignty is unlike those of other native groups in the United States. Native Hawaiians were citizens of an organized, self-governing nation whose membership in the international community was well established. Unlike other Native American groups, the Hawaiian Kingdom was never a "domestic, dependent nation" whose sovereignty was limited by federal authority.[68] Consequently, analogies to Indian law lose their value when speaking of the Native Hawaiian claim for loss of sovereignty.

In examining the sovereignty claim the basic factual context of that claim should be restated. Native Hawaiians were citizens of an aboriginal nation with internal and external attributes of sovereignty. But for the actions of the United States and its agents in 1893, Native Hawaiians would still be citizens of such a nation and would still exercise those self-governing rights. Native Hawaiians were deprived of the most basic right of nationhood - the right to exist. This deprivation was accomplished with the assistance of the United States Minister to Hawaii and the aid of American troops. Those actions were a clear violation of the Hawaiian Kingdom's right to independence and the principle of non-intervention in the affairs of another nation. Further, those actions subsequently led to annexation of Hawaii by the United States and to the federal government's acquisition of approximately 1.75 million acres of native land. All of this was accomplished in spite of overwhelming opposition by Native Hawaiians.[69] Admittedly, no Constitutional or statutory provision requires the United States to recognize a claim for loss of sovereignty. However, principles of justice and honor certainly require the United States to deal fairly with its native people.

D. Trust Relationship

The NHSC Draft Report erroneously states that a fiduciary relationship between the Federal Government and an Indian tribe can arise only from provisions of a treaty, statute or agreement whereby the Government assumes fiduciary obligations toward the tribe.[70] The trust relationship can be based on a variety of sources, including not only treaties, statutes, and agreements, but also acts providing specific benefits to native groups, and the entire course of federal government practice as it relates to the group.[71] In discussing the existence of a trust relationship between Native Hawaiians and the United States, the NHSC Draft Report ignores the primary source from which a trust duty arises - namely the role of the United States and its agents in overthrowing the Hawaiian Kingdom and the subsequent acquisition of almost 1.75 million acres of native land. Not unexpectedly, the United States has never clearly acknowledged its wrongdoing. Obviously once the wrong was acknowledged, a duty would arise. Consequently, it is hardly surprising that the Draft Report would conclude that no trust relationship exists and therefore reparations and restitution are not due.

However, even lacking the actual acknowledgment of a wrong, certain actions of the United States do indicate the existence of trust obligations with respect to Native Hawaiians. The NHSC Draft Report has neglected even to mention the two federal statutes which unequivocally establish a trust relationship between Native Hawaiians and the Federal Government.

In 1921, the Hawaiian Homes Commission Act was adopted by Congress.[72] Under the Act, Congress recognized its obligations to Native Hawaians and placed in trust, for the benefit of those with 50% or more aboriginal blood, over 200,000 acres of land to be leased to Native Hawaiians at a nominal fee for 99 years. The lands placed in trust were part of the lands ceded to the United States at the time of annexation. Thus, as with other native groups, a portion of the aboriginal lands acquired by the United States was specifically set aside in trust for the protection and rehabilitation of the people whose lands were taken. In 1959, primary responsibility for the Hawaiian Homes Commission program was transferred to the State of Hawaii, but the federal government still retains certain responsiblities for the program. Land exchanges must be approved by the Secretary of the Interior and the Hawaiian Homes Commission Act cannot be amended or repealed by the state without Congressional action, unless the amendments deal solely with administrative matters or increases benefits to Native Hawaiians. Most importantly, the federal government retains enforcement power over the Hawaiian Homes trust.[73] Indeed, the federal government has admitted the existence of such a relationship in an amicus curiae brief filed in a recent case brought against the Hawaiian Homes Commission for violations of the Homes Commission Act.[74]

The second major piece of legislation establishing a trust relationship between the United States and Native Hawaiians is Hawaii's Admission Act.[75] Under that Act, the federal government gave the fee title to ceded lands (those lands obtained at the time of annexation) to the State, but specified five trust purposes for which those lands and the proceeds and incomes generated therefrom could be used.[76] Amongst those purposes was the betterment of the conditions of Native Hawaiians, as defined in the Hawaiian Homes Commission Act. In addition, Hawaii's Admission Act provides that failure to use the lands and funds as specified "shall constitute a breach of trust, for which suit by the United States may be brought."[77] By placing these restrictions upon the state's use of ceded lands, which originally were the Government and Crown lands acquired by the federal government at the time of annexation, the United States implicitly recognized its obligation to the native people of Hawaii.

Furthermore, the United States has continued to recognize Native Hawaiians as an aboriginal group in numerous legislative acts since 1959. These acts include the 1974 Administration for Native Americans Act, the 1978 Comprehensive Employment and Training Act, the American Indian Religious Freedom Act, and the Hawaiian Education Study Act of 1980.[78]

Thus, the NHSC Draft Report has totally ignored the entire course of Congressional practice and dealing with regard to Native Hawaiians. These acts do evidence trust obligations to Native Hawaiians even though the United States has been reluctant to fully acknowledge its responsibilities. Indeed, the NHSC Draft Report itself is merely one more example of the federal government's failure to deal impartially and fairly with the claims of Native Hawaiians.

48. Library of Congress, Legislative Research Service, *A History of the Alaska Native Claims Settlement Act of 1971. Together with A History of the Determination and Disposition of the Property Rights of Native Hawaiians, Being A Companion of these Two Situations in Light of Proposing a Settlement of Hawaiians Native Land Claims*, April 20, 1973.

49. *Id.*, at 26-31.

50. *NHSC Draft Report* at 228.

51. *See*, note 5 *supra*.

52. *NHSC Draft Report* at 230-231.

53. *Rev. Laws of Hawaii, 1925*, Vol. II, at 2152-2176. Also, Act Confirming Rights of Native Tenants currently found in *Haw. Rev. Stat.* § 7-1.

54. The Mahele Book, the Declarations of Kamehameha III setting apart government lands and setting apart King's lands, the Act of June 7, 1848 accepting government land and confirming King's lands are the beginning points for determining boundaries of these lands. The State Department of Land and Natural Resources maintains records as to transactions subsequent to Mahele. Although an extensive search would be necessary, the DLNR's recent work on an inventory of state lands provides most of the groundwork.

55. *Williams v. City of Chicago*, 242 U.S. 434 (1917); *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 525 (1st Cir.), *cert. denied*, 444 U.S. 866 (1979).

56. *United States ex rel. Hualpai Indians v. Santa Fe Pac.*

R.R., 314 U.S. 339 (1941).

57. See, U.S. v. Northern Paiute Nation, 490 F.2d 954 (Ct. Cl. 1974); U.S. v. Fort Sill Apache Tribe, 533 F.2d 531 (Ct. Cl. 1976); Temoak Bank of Western Shoshone Indians v. U.S., 593 F.2d 994 (Ct. Cl. 1979).

58. See, p. 20-21 of these comments.

59. Sovereignty and Land, supra note 1, at 81-83.

60. This policy is based upon international law considerations, see, eg. Barker v. Harvey, 181 U.S. 481 (1901).

61. Pueblo Lands Act of 1924, ch. 331, 43 stat. 636; California Private Land Claims Act of 1851, ch. 41, 9 Stat. 621; Alaska Native Claims Settlement Act, Pub. Law 92-203, § 4, 85 Stat. 688, 689.

62. NHSC Draft Report at 236.

63. 22 Ops. U.S. Att. Gen. 574 (1899); 22 Ops. U.S. Att. Gen. 627 (1899).

64. Admission Act of March 18, 1959, 73 Stat. 4, § 5.

65. See, Inter-Island Steam Nav. Co., v. Terr. of Hawaii, 305 U.S. 306 (1938); Organic Act, Act of April 30, 1900, ch. 339, 31 Stat. 41, §§ 66, 69, 80, 85, 55.

66. NHSC Draft Report at 239.

67. See, NHSC Draft Report at 209-210.

68. Chief Justice John Marshall in Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831) set out the principle that Indian tribes lacked full sovereignty, but were domestic, dependent nations under the tutelage of the federal government.

69. NHSC Draft Report at 239.

70. See eg., Duncan v. United States, 667 F.2d 36 (1980), which held that when the federal government takes over control or supervision of Indian property, the fiduciary relationship exists even if pertinent statutes do not explicitly say that; White v. Califano, 437 F. Supp. 543, (D.S.D. 1977), aff'd., 581 F.2d 697 (8th Cir. 1978).

71. Act of July 9, 1921, ch. 42, 42 Stat. 108

72. Hawaii Adm. Act, supra note 65, § 5 (g); see also § 4.

73. Amicus Curiae Brief of United States filed in Keaukaha-Panaewa Comm. Association. v. Hawaiian Homes Commission, 588 F.2d 1216 (9th Cir. 1979).

74. Hawaii Adm. Act, supra note 65, § 5(f).

75. Id.

76. Id.

77. See, discussion of these acts in Sovereignty and Land, supra note 1, at 89.

Senator Matsunaga. Thank you very much, Ms. MacKenzie. Your statement will appear in full in the hearing record of the committee.

I understand that Mrs. Marion Kelly, the anthropologist of Bishop Museum, is now here. Mrs. Kelly?

STATEMENT OF MARION KELLY, ANTHROPOLOGIST, BISHOP MUSEUM

Mrs. Kelly. Hon. Senators Matsunaga and—this morning Senator Inouye was here. I'll have to change my speech. And Hon. Representative Akaka, and staff members, ladies and gentlemen, aloha.

I consider it an honor to have been asked to give testimony today and to share with you some of the results of my research of the past 30 years.

Before giving my testimony, I am required to inform you that although I am privileged to work at Bishop Museum, what I say should in no way be construed as the official position of the museum trustees, or its director.

I have been asked to speak on two subjects.

First, the nature of the relationship between the people and the land in Hawaiian Times; that is, before 1778. And second, something of the background and the result of the Mahele of 1848 and the Kuleana Act of 1850. Now, I have prepared a document that was 15 pages long, and I decided, after I got your letter, that I would have to cut it down. So I got up this morning at 3:30 and prepared a 5 page statement. So there's going to be a lot left out.

Now, as to the nature of the relationship between Hawaiians and the land. The Polynesians who settled Hawaii, perhaps as early as 300 A.D., brought with them a long Pacific island history and a distinctive Polynesian culture: their language, religion, their art, navigational knowledge, agriculture and fishing technologies, their legends and history, and the plants and animals which they cultivated and domesticated.

It was their belief that their gods had created the land and the sea and everything on the land and in the sea. These resources were there for everyone's use—land, water, sea. Because these were created by the gods, they must be cared for. No one must take more than they need, and everything must be shared.

The relationship to the land in Hawaiian times was based on two principles; traditional use-rights and access rights. Use-rights were established by the hundreds of thousands of Hawaiians through the centuries, giving their lives, their creativity and labor to cultivating the soil and making it productive. As many as 4½ or 5 million Hawaiians lived and died in the islands before 1778.

The land divisions, oriented as they were, mauka-makai, reflect the premise that everyone had access rights to all the resources of the land and sea. Each land parcel included a portion of the coast, the kula lands, the stream watered garden land, the breadfruit tree zone, the dryland taro growing zone, and on up into the fern and forest zones. Sometimes these cultivation zones were in one long narrow parcel called 'ili 'aina, and some of them were discontinuous, 'ili lele.

The chiefs, as representatives of the gods, parcelled out use-rights to the land, but not allodial title, because the land was not theirs to give in that sense. The land was not the private property of anyone; neither chiefs, kings, nor commoners. But everyone had use rights to the land and access rights to its resources. The land belonged to all in common and as a group.

Not a shred of evidence supports the common misunderstanding today that Hawaiian chiefs in precontact times owned allodial title to the land. This fact was even admitted in the declaration of rights in 1839, and I quote:

> Kamehameha I was the founder of the kingdom, and to him belonged all the land from one end of the islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I was the head, and had the management of the landed property.

Now as to the Mehele of 1848 and the Kuleana Act of 1850. Private ownership of the land was not a Hawaiian concept. And in order to institute a land registration program based on private ownership, it became necessary to create the myth that the king owned the land. This was the primary burden of the "Principles Adopted by the Board of Commissioners to Quiet Land Titles in 1846."

While admitting that, and I quote, "All these persons, the King, the chiefs, and down to the lowest class of tenants, were considered to have rights in the lands, or the production of them." The board of commissioners made contradictory conclusion. They wrote that even though there was "joint ownership of the land; the King really owned the allodium." By declaring that the king did own the allodium, the commissioners were then able to say that he had the right to give it away or to sell it. Thus, with a few simple words they wiped out the cultural heritage of a thousand years—common, or undivided use rights and access to all the resources of the land and sea that made life possible for all the Hawaiian people.

The Mahele of 1848 was the first step in separating the rights of the chiefs and the king, each quit claiming their interest in the other's land.

While commoners were given 2 years, from 1846 to February 14, 1848, to register their claims, there were many obstructions. Less than 8,000 families were actually awarded kuleana land. About 70 percent of the population was made landless at this time. They received no land, no compensation for recognition of rights, and therefore their rights cannot, under any circumstances, be construed to have been extinguished.

In the final tally, the lands were divided approximately in this way: the king, about 1 million acres; the chiefs, about 1,600,000 acres; the government, about 1,000,500 acres; the kuleana farmers, 28,000 acres.

In summary, the whole process ended up concentrating the ownership and control of the land in the hands of a few, and forming the landless majority of the people—and forcing the landless majority of the people to labor for the chiefs or the foreigners, or others who had obtained land. I believe it was planned this way because it was the foreigners who wanted to make land available to themselves and who summoned their countries vessels to intimidate the king and the chiefs. In 20 years, between 1824 and 1844, 52 foregin man-of-war ships came to the Islands. Fearing to be taken over by the foreign warships, the king and chiefs turned to their friends, the American missionaries, for help.

The first missionary to enter the Hawaiian Government service was Rev. William Richards in 1838. He was followed in 1842 by Gerrit P. Judd; in 1844 by John Ricord; in 1845 by Robert Wyllie and Rev. Lorrin Andrews; and in 1846 by William Lee, who became the chief justice of the superior court, and in 1847 became a member of the land commission, replacing Rev. William Richards. All were Americans with the exception of Wyllie, who was British. They wrote the laws, guided the king and chiefs through the Mahele and carried out the process of land registration to its conclusion.

The real purpose of the whole business is revealed, I believe, by the fact that the kuleana claimants, the small farmers, had to wait for 2½ years after the deadline for registering their claims before the Kuleana Act was passed in August 1850. And the commissioners finally got around to hearing testimony and making awards. But a month before, in July 1850, the legislature passed the act that permitted the foreigners to buy, sell, and own land in Hawaii. Now a commodity, land was bought by those who had money to buy it, and sold by those who didn't have or needed money.

Today there are very few Hawaiians who own land. The chiefs' lands, practically all that remains is in the hands of a few estates, most of it having been sold or used to pay off debts. By 1915 Historian Lydgate estimated that at least 15 percent of the kuleana land has already been absorbed by the large plantations. The process of concentration of land ownership continued. No one knows today how many, if any, kuleana are still owned by the descendants of the original awardees. We do know, however, that most Hawaiians never got kuleana.

Thank you very much.

Senator MATSUNAGA. Thank you very much.

Our next witness is a law student at the University of Hawaii, Cecilia Chang.

STATEMENT OF CECELIA Y. CHANG

Ms. CHANG. Thank you Senator Matsunaga, Congressman Akaka, and ladies and gentlemen. Thank you, for this opportunity to speak with you.

I'd like to discuss the major points of the paper I submitted to you this morning regarding the application of agency law to the American involvement in the overthrow of the Hawaiian Government.

Both the minority report and the majority report of the Native Hawaiians Study Commission generally agree that in 1893 the U.S. Minister to Hawaii, John L. Stevens, contributed to the overthrow of the Hawaiian Kingdom in two instances.

In the first, at the request of a small band of insurrectionists, which called themselves the Committee of Safety, Stevens ordered the captain of the U.S.S. *Boston* to land troops in Hawaii. Stevens and the insurrectionists were both proannexationists. Stevens knew that these proannexationists wanted to overthrow the kingdom and annex Hawaii to the United States. Stevens said that he was landing the troops for legitimate reasons to protect American lives and property in the event of a conflict between the insurrectionists and the kingdom. Both the majority report and minority report agree, however, that the troops marched to the government building and that the troops position were ideal for participation in a conflict, rather than protection of American property. To avoid violence, Queen Liliuokalani neither objected to the illegal presence of the troops, nor arrested the insurrectionists for their acts of treason.

Given Stevens' implicit support, the band of insurrectionists occupied the government buildings, announced that the Queen was ousted, and declared themselves the new provisional government. This provision of U.S. military aid was Stevens' first violation of international law, which I'm speaking about.

The second violation was Stevens' premature recognition of this provisional government. This forced the Queen to yield her authority in order to avoid bloodshed again. In recognizing the provisional government, Stevens breached his duty to not interfere in the domestic political affairs of a foreign state. The majority report generally agrees with these factural findings, but erroneously concludes that the United States is not legally responsible for Stevens' wrongful acts.

As to the first violation, the premature—excuse me, the second one. The premature recognition of the provisional government, the majority report draws no legal conclusions, as if it was unimportant. But it is important. Because a State has a duty to not interfere with the domestic affairs of a sovereign State.

As to Stevens' second violation—excuse me, the first one, the provision of military assistance to the revolutionists, the majority report asserts that the United States is not responsibile for Stevens' illegal acts because the United States did not explicitly authorize such acts. The majority report offers no legal basis for its conclusion, because there is none. Under agency law, a government is responsible for the acts of its agents—meaning its officials, its employees, its representatives. In this case, the United States is responsible for Stevens' ordering of the landing and Commander Wiltse's actual landing of the troops. It doesn't matter whether these illegal acts were expressly authorized or merely permitted by the United States, or even contrary to the State Department's orders. What does matter is that the U.S. Government delegated some of its authority to its officials. By doing this, the Government is responsible for the agent's use or misuse of its authority, whether authorized or not. The State is responsible because it gave the agent the power to act on its behalf.

In my paper, on page 18, I note that this is important because if this legal duty were not imposed, governments could always evade liability by merely instructing their agents to refrain from violating international law, and then by rejecting actions that cause harm to others. Governments cannot reasonably expect to enjoy the benefits accruing to them through their agents' dealings, yet at the same time avoid obligations imposed on them by the actions of the very same agents.

If they expect to enjoy the benefits of any treaties that these agents have made between foreign countries, if they expect to benefit from any money to be gained or contracts made, they must also accept the bad with the good.

In this case, both officials messedup, and the U.S. Department recognized that, but did not compensate the native Hawaiians.

My time has run out. Are there any questions?

Senator MATSUNAGA. I wish we had time to ask questions, but you have submitted a very comprehensive document to support your propositions, and your statement will appear in full in the record.

Ms. CHANG. Thank you.

[The prepared statement of Ms. Chang follows:]

TESTIMONY

ON THE NATIVE HAWAIIANS STUDY COMMISSION REPORT

FOR THE U.S. SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

The Honorable Spark M. Matsunaga
Chairman

by

Cecelia C. Y. Chang

Honolulu, Hawai'i

April 16, 1984

EXECUTIVE SUMMARY

This paper was prepared in fulfillment of an externship program administered by the William S. Richardson School of Law at the University of Hawai'i at Manoa and the Kaulana Na Pua Institute. Professor Jon Van Dyke assisted in reading and offering research guidance in its development.

Review of International Law of Agency and American Involvement in the Overthrow of the Hawaiian Kingdom is organized in four parts and briefly summarized below.

I. INTRODUCTION

The Final Report of the Native Hawaiians Study Commission (NHSC, dated June 23, 1982) was mandated by Congress (P.L. 96-565, Title III) to study the culture, needs and concerns of native Hawaiians.

A major focus of that study were possible violations of international law by the United States in the 1893 overthrow of the Kingdom of Hawai'i.

II. FACTS

It is generally agreed by both the Majority Report and the Minority Report that, in 1893, United States Minister John L. Stevens, without the express authority of the U. S. State Department, ordered Captain Gilbert C. Wiltse to land one-hundred-fity Marines off the U.S.S. Boston in Honolulu.

This action contributed to the overthrow of the Hawaiian Kingdom by supporting the revolutionists and suppressing any resistance from Queen Lili'uokalani. After the revolutionists occupied government buildings and declared a new Provisional Government, Minister Stevens prematurely recognized the Provisional Government. Minister Stevens, at the request of the revolutionists, declared an American protectorate.

Despite disapproval of the protectorate by the State Department, the situation remained the same for two months, until Minister Stevens was recalled.

III. INTERNATIONAL AGENCY LAW

Under international law, a State is legally responsibile for the wrongful acts of its agents.

This principle is comparable to domestic law which imposes liability for damages on government for the torts committed by its agents.

THE AGENT'S POWER TO BIND ITS PRINCIPAL

The agent-principal relationship is essential to government. It is necessary that governmental authority be delegated to agents who will act on the government's behalf.

An agent therefore has authority to legally commit its principal, the government.

Both the United States and Hawai'i recognized this agency concept in the 1800's, as the Hawaii - United States Treaty of 1826 illustrates.

STATE RESPONSIBILITY FOR ITS AGENTS' ILLEGAL ACTS

Original Responsibility for Authorized Acts

> A State is originally responsible for acts it expressly authorizes. A State also has the duty of noninterference in the domestic and political affairs of a foreign State.
>
> The United States expressly authorized Stevens' premature recognition of the Provisional Government and, consequently, is originally responsible for interfering in the political and domestic affairs of Hawaii.

VICARIOUS LIABILITY FOR UNAUTHORIZED, ILLEGAL ACTS

A State is vicariously responsible for the unauthorized, unlawful acts of its agents.

Standard of Responsibility

Apparent Authority

A State is liable for its agent's acts which are within the agent's apparent authority.

The unlawful landing of Marines was within the apparent authority of both Wiltse and Stevens, as evidenced by the **exercise of such authority by former U. S. Ministers and Naval Commanders in Hawai'i.**

The Duty to Control Subordinates

A State is responsible for controlling its agents because they are given the authority of the State. The United States is liable for failing to control the conduct of Wiltse, Stevens, and the armed troops in both the overthrow of the Kingdom and the recognition of the Provisional Government.

IV. CONCLUSION

The United States is vicariously responsible for the landing of American Marines which facilitated the overthrow of the Hawaiian Government. Both Minister Stevens and Captain Wiltse acted with apparent authority. Moreover, the United States had a duty to control the actions of the Minister, the Captain, and the troops.

The United States is originally responsible for breaching its duty of noninterference with the political affairs of Hawai'i by authorizing Minister Stevens' premature recognition of the Provisional Government.

INTRODUCTION

This paper examines the differing positions taken in Volumes I and II of the Final Report of the Native Hawaiians Study Commission (dated June 23, 1983) regarding whether the U.S. is responsible for the actions taken in 1893.

Volume I, generally known as the Majority report of the Native Hawaiians Study Commission, finds that the overthrow of the Hawaiian monarchy and Queen Lili'uokalani's submission to the revolutionists "was encouraged in part by the presence of the United States forces..." They conclude, however, that the United States Government has no responsibility for the consequences of these actions because American agents were **"...acting without express authority from the United States Government..."** 1/

The Majority's erroneous conclusion is apparently premised on the fact that the United States Government did not expressly authorize the unlawful actions of its officers and troops. The Majority asserts that because the United States Government did not expressly authorize the illegal actions of its officials and armed forces, the Government is not responsible for the overthrow of the monarchy.

Volume II, the minority view of the Commission, argues that the United States Government is responsible for its officials' and troops' actions regardless of explicit authorization.

The key issue posed is whether the United States Government is legally responsible for the unlawful acts of its officials and naval forces. This question is approached below by discussing the facts concerning the 1893 revolution and then applying general principles of agency law to the facts.

FACTS

On January 14, 1893, Queen Lili'uokalani sought to replace the "Bayonet Constitution" which had been drafted by the secret Annexationist Club and forced upon the Kalakaua monarchy in 1887. The Queen's new Constitution, would have (a) expanded the right to vote to more natives by eliminating property requirements; (b) restricted the right to vote to male citizens born in Hawaii or naturalized, thus eliminating many Westerners that were voting; and (c) authorized the legislature to remove cabinet members. These changes were generally favored by the native population and disfavored by the European and American landowners who enjoyed economic power in Hawaii. 2/ In view of the possible resistance from these landowners, the Queen complied with her advisors' suggestion that she postpone the declaration of the new Constitution.

However, word of the Queen's Constitution traveled quickly. The Annexationist Club met again, renaming itself the "Committee of Safety" led by Henry E. Cooper. The Committee passed a resolution that Hawaii be annexed to the United States and sent three representatives to the American Minister, a pro-annexationist, John L. Stevens, to secure the support of "the United States forces for the protection of life and property, the unanimous sentiment and feeling being that life and property were in danger." 3/ According to one of the representatives, Lorrin Thurston, Stevens "said that the United States troops on board the Boston would be ready to land any moment to prevent the destruction of American life and property, and in regard to the matter of establishing a Provisional Government, they of course would recognize the existing government whatever it might be." 4/

It was logical for Thurston to expect that Minister Stevens would land American troops because Marines had previously been landed in 1874 and 1889 to quiet disturbances. Also, in 1890, although Stevens did not land troops, he placed them on alert in case of another riot.

Thurston further explained that the "existing government" meant that government which possessed "the Government building, the executive departments and archives, and [was] in possession of the city [and] that was a de facto government, proclaiming itself a government..." 5/

Given Stevens' implicit encouragement, the Committee was assured that the American troops aboard the USS Boston would support them in the event of an insurrection. Therefore, in order to implement its plan for annexation, the Committee immediately began augmenting its revolutionary army, conspired to oust the Queen, and arranged to establish a provisional government.

The following day, January 15th, in order to prevent a conflict, the Queen sent two cabinet members to inform the Committee for Safety that the proposed Constitution would no longer be declared. Later that day, Cabinet members also asked Stevens what he intended to do if there was a revolution and were advised that Stevens would not aid the Queen and her Government. 6/

The next morning, on January 16th, the Queen's Cabinet announced that the new Constitution would not be declared. Nevertheless, the Committee requested Minister Stevens' military aid to protect the public from the "revolutionary acts of Queen Lili'uokalani." 7/

Thus, in the absence of any realistic threat to public safety and property, the Committee used the Queen's proposed Constitution as a pretext for requesting U. S. Military aid to further its stated purpose, annexation. The attraction of annexation at this point was that the McKinley Tarrif Act which **increased the tax on sugar imported from Hawai'i to the United States had resulted in economic depression. 8/**

Minister Stevens, a proannexationist, also had an ulterior motive for assisting the revolutionists. The United States' interest in promoting its national security, especially in view of "Britain's and Germany's high interest in the Pacific" 9/ prompted Minister Stevens to provide the military intervention necessary for the success of the revolution.

At 3 o'clock that afternoon, Minister Stevens boarded the USS Boston and requested that the U. S. troops land in order to protect American lives and property. Captain Gilbert C. Wiltse, who had anticipated the request, ordered the naval forces to land. Some of the Marines guarded the United States Legation and the United States Consulate. Curiously, though, the rest of the troops remained at Arion Hall, near the Palace, "an ideal location from which to participate in any conflict between" the government and the revolutionists, 10/ thus lending support to the revolutionists and suppressing any resistance from the Queen. Arion Hall was a poor location for protecting American lives and property, but "if troops were landed for the protection or support of the provisional government, it was a wise choice." 11/

The following morning, on January 17th, the Queen sent a letter to Minister Stevens to reassure him that there would no longer be a new Constitution. However, Stevens did not respond. The Queen's cabinet members then went to the U. S. Legation to seek Stevens' assistance but were informed, according to one member, that Stevens intended to support the revolutionists in the event of a conflict. 12/

In the afternoon, the Commitee of Safety gained possession of the Government Building without any violence and made a public declaration that Queen Lili'uokalani was ousted and that the Committee for Safety was the new Provisional Government. 13/

Stevens did not hesitate to formally recognize the Provisional Government that day. Because Stevens supported the Provisional Government, Queen Lili'uokalani yielded her authority to avoid bloodshed. 14/

On February 1, 1893, in response to a request by the Provisional Government, Stevens provided assistance by declaring an American protectorate and by substituting the American flag for the Hawaiian flag. The U. S. Marines then occupied the Government Building. 15/

The U. S. State Department informed Stevens that recognition of the Provisional Government in order to protect American lives and property was proper but that forming a protectorate and substituting the Hawaiian flag with the American flag exceeded the bounds of his authority. Nevertheless, the situation remained the same until April first when President Cleveland's representative, James Blount, arrived to investigate the overthrow. Blount ordered that the American flag be removed and that the U. S. troops return to their ship and ordered the immediate recall of Minister Stevens. 16/

INTERNATIONAL AGENCY LAW

As a general rule of international law, a government is responsible for the illegal acts of its agents - such as officials, employees and members of its military - regardless of whether such acts were authorized by the government or not. This principle of agency law applies to the facts stated above; the United States government is clearly responsible for the wrongful acts of its officials, Captain Gilbert C. Wiltse and American Minister to Hawaii John L. Stevens, which contributed to the overthrow of the Hawaiian Government in 1893. The U. S. military intervention ordered by Stevens and Wiltse, assisted the Committee for Safety in its overthrow of the Hawaiian Kingdom and its establishment of a provisional government. Thus, the United States, through the acts of its official representatives, Stevens and Wiltse, is accountable for depriving native Hawaiians of their basic right to exist as an independent, sovereign nation. This loss of sovereignty means that native Hawaiians were denied the "right to choose a form of government, make laws, oversee the public domain, and provide for their common good. Moreover, they lost the right to stand as an equal in the international community, to make agreements and treaties with other nations, and to exhibit the external manifestations of sovereignty. " 17/ According to well-established international law of agency, the United States is required to compensate native Hawaiians for this deprivation of "rights and control that are paramount to a sovereign nation." 18/

This principle of agency under international law is comparable to the general rule of tort law that the employer is liable for any torts committed by the employee within the scope of his employment. For example, Long v Eagle Stores Co., 214 N.C. 146, 198 S.E. 573 (1938) held that a customer who was arrested by the assistant manager of a store had a cause of action against the employer.

Similarly, governments can be liable for the acts of its agents. This is illustrated below in an excerpt from an unpublished article written at the request of the Office of Hawaiian Affairs by McKenzie and Van Dyke:19/

In "Municipalities Found Liable the City of Lexington v. Yank, 431 SW 2d 892 (Ky. 1968), the City of Lexington was held liable for personal injuries and medical expenses which resulted from an assault and battery by a police officer after the officer stopped an auto for a traffic violation, assaulted a passenger with a blackjack and handcuffed and threw the passenger in a paddywagon. The court noted that the principal-agent and master-servant relationships within the scope of the respondeat superior doctrine (allowing one party to be held liable for another's actions) do exist between a municipal corporation and its employees and agents...

"Federal Tort Claims Act

Under the FTCA, sovereign immunity is waived and the United States may be held liable for the negligence of its employees where, applying the law of the place in which the violation or injury occurred, a private individual under like circumstances would be liable. Consequently, in Thompson v. United States, 504 F. Supp. 1087 (C.D.S.D. 1980), the United States was held liable in a wrongful death action where a CETA trainee employed as a police officer by the Sioux Tribe shot and killed a man. Applying the law of South Dakota, the court held that an employer-master is liable for the acts of an employee within the general scope of his employment, while engaged in his master's business and done with a view to furtherance of that business and the master's interest, even where, as in this instance, the acts were done wantonly and willfully...Finally, [I]n Cruikshank v United States, 467 F. 2d 539 (D. Haw. 1979), the United States was held liable for invasion of privacy resulting from actions of CIA agents in intercepting and opening correspondence between plaintiff and persons in the Soviet Union.

"Constitutional Torts

A third type of case in which governmental entities have **been found liable for conduct of their employees is the constitutional tort situation... In Herrera v. Valentine, 653 F. 2d 1220 (8th Cir. 1981), a police officer and his employer, the city of Gordon, Nebraska, were held liable for** violating the constitutional rights of a pregnant woman when the officer kicked her and ignored her pleas for medical attention, resulting in the death of her unborn child and severe emotional and physical trauma. The plaintiff's claim against the City of Gordon was based on the City's failure to properly hire, train, retain, supervise, discipline and control its police officers, thereby directly causing her injury."

Thus, the basic legal concepts of agency law are well-established and recognized even with regard to domestic disputes and cannot now be disregarded. The same basic concepts of agency law illustrated above are not limited to domestic law but extend to the international sphere as well and apply to the American involvement in the overthrow of the Hawaiian Kingdom in 1893.

THE AGENT'S POWER TO BIND ITS PRINCIPAL

In order for any government to function efficiently and effectively it is necessary that its authority be delegated to its representatives who then act on its behalf. Consequently under agency law, such representatives, or agents, have the power to bind their government legally. This agent principal relationship is often essential for the purposes of treaty formation. "The treaty-making power of States is, as a rule, exercised by their Heads, acting either personally or through representatives appointed by them, or by their Governments. Heads of States do not act in person, but authorize representatives to act for them..." 20/ More specifically, "the head of a sovereign State is deemed by international law to have plenary powers to commit his State... The Foreign Minister or Secretary is historically the principal assistant of the head of State. Thus, a rule of International law has developed in accordance with which he also has plenary powers in all matters within the scope of his office." 21/

This agency principle which recognizes a representative's authority to commit a government legally was the determining factor in the outcome of The Legal Status of Eastern Greenland [1933] P.C.I.J., Ser. A/B, No. 53, a territorial dispute in which the Danish Government alleged that "Norway has by treaty or otherwise herself recognized Danish sovereignty over Greenland as a whole and therefore cannot now dispute it." 22/[emphasis added] In this case, the Dutch colonization of Greenland was considered sufficient to establish its sovereignty over the entire island despite Norway's claim to an unoccupied area of Eastern Greenland. On July 14, 1919 the Danish Minister requested that the Norwegian Government not interfere with the Danish Government's "extending their political and economic interests to the whole of Greenland." 23/ On July 22, 1919, the Norwegian Minister for Foreign Affairs "informed the Danish Minister that the Norwegian Government would not make any difficulties in the settlement of this question." 24/

The acts of both diplomats were critical to the Court's holding that it is

> "beyond all dispute that a reply of this nature given by the Minister for Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs."25/ [emphasis added]

Norway was thus precluded from challenging Danish sovereignty over Eastern Greenland.

Similarly, the Hawaii - United States Treaty of 1826 also exemplifies that legal obligations between nations arise from the acts of their official representatives. Captain Thomas ap Catesby Jones, acted as and was recognized as an official representative of the United States, although "he felt he had not 'been authorized to make treaties'". He negotiated and concluded a commercial and peace treaty with King Kamehameha III. Although the U.S. did not ratify the treaty, it was considered binding on both governments. 26/

"A 1933 [U.S.] State Department statement put things this way: Neither in the correspondence nor in the report of Jones nor in the articles themselves is there any mention of the matter of ratification; and as this was the first international agreement ever made by the Hawaiian Government with a foreign power, it may well be that little, or perhaps nothing, was then known at Honolulu regarding ratification as a step in treaty-making procedure. So far as Hawaii was concerned, no ratification was required, the assent of the Hawaiian Government was complete upon signature; as a practical matter, this Government was warranted in regarding the paper as sufficient without further action; ratification was a step that could be taken later, if it should become desirable or **essential; in the meantime the agreement was de facto in force at Hawaii and was doubtless there regarded as in force de** jure." 27/ [emphasis added] Thus, by 1826, both the United **States and the Hawaiian Kingdom acknowledged that their** representatives - such as Captain Jones, in the example above - were empowered to act on behalf of and with significant legal consequences to their governments.

In the 1800's, it was especially necessary for the United States to afford its agents a great deal of authority to act on the government's behalf, because the agents were isolated in the Pacific, far away from Washington.

> "...[D]iplomatic messages required 7 - 14 days
> to travel from Honolulu to Washington D. C. ..." 28/

Therefore, in 1893, both Captain Wiltse and Minister Stevens were authorized to legally bind the United States with their actions.

STATE RESPONSIBILITY FOR ITS AGENTS' ILLEGAL ACTS

A State may be liable for the internationally injurious acts of its agents either originally or vicariously. The State may be originally responsible for any acts of private persons or governmental agents which it explicitly authorized. The State may also be responsible for acts which it does not explicitly authorize. When governmental agents exercise power given to them by the State in acting lawfully or unlawfully, the State is vicariously responsible for such acts even though the acts were not expressly authorized by the State. For example, a State would be originally responsible for invasion of privacy if it ordered law enforcement officers to illegally search citizens. A State would be vicariously responsible if, contrary to State guidelines, a law enforcement officer illegally searched a citizen.

ORIGINAL RESPONSIBILITY FOR AUTHORIZED ACTS

A State bears original responsibility for "a neglect of its own [international] duty" because its governmental action or inaction. This responsibility extends to acts of governmental agents and private persons whom the government has authorized to act on its behalf. This authorized "neglect of international legal duties by a State constitutes an international delinquency" for which a State bears "especially grave" responsibility. 29/ Therefore, internationally injurious acts of diplomatic envoys "performed at the command or with the authorisation of his home State, constitute international delinquencies for which the home State bears original responsibility, and for which the envoy cannot personally be blamed." 30/ In other words, this means that any illegal acts of Minister Stevens and Captain Wiltse which were authorized by the United States Government constitute international delinquencies for which the United States is originally responsible.

Under this principle of original responsibility, the United States Government, through its official representative, Minister Stevens, breached its duty of noninterference in the political affairs of another sovereign nation by prematurely granting formal recognition to the Provisional Government.

The established international policy of noninterference is defined in the 1928 Havana Convention on Diplomatic Officers: Article 12

> "Foreign diplomatic officers may not participate in the domestic or foreign politics of the State in which they exercise their functions." 31/

Moreover, the Foreign Affairs Manual of the Department of State provides in relevant part:

> "A U.S. Citizen employee shall not engage in any form of political activity in any foreign country." 32/

Minister Stevens improperly interfered with the politics in Hawaii by formally recognizing the Provisional Government before Queen Lili'uokalani yielded her authority. Such support to the Provisional Government by an American diplomat with naval forces under his authority, in effect, forced the Queen to yield her authority to avoid bloodshed. This was clearly unwarranted interference in the political activity of a foreign State.

The recognition was premature not only because the Queen had not yet yielded her authority, but because the Provisional Government may have not in fact constituted a de facto government; for the Provisional Government which was "not sufficiently stable and lacking the military strength to insure its own existence" 33/ hardly seems to satisfy the requirement that a de facto government be that government which exercises control.

On February 11, 1893, United States Secretary of State Foster approved Stevens' actions:

> "So far, therefore, as your action amounts to according, at the request of the de facto sovereign Government of the Hawaiian Islands, the cooperation of the moral and material forces of the United States for the protection of life and property from apprehended disorders, your action is commended." 34/

Therefore, the United States is originally responsible for the consequences resulting from Stevens' premature recognition of the "de facto" government.

In summation, the United States is originally liable for Minister Stevens' unjustified, improper participation in the political affairs of the Hawaiian Kingdom.

Even if the United States, however, had not condoned such misconduct by giving it official authorization, it would still be legally responsible under the legal concept of vicarious responsibility discussed below.

VICARIOUS LIABILITY FOR UNAUTHORIZED ILLEGAL ACTS

A State "bears a wide and altogether unrestricted vicarious responsibility" for the unauthorized, unlawful conduct of its administrative officials and military and naval forces which "fall within the normal scope of their duties" or are "committed in the exercise of their official functions", because such agents are subject to their government's "disciplinary control". [emphasis added] 35/ Although such acts do not constitute State acts and are therefore not considered international delinquencies, the State must:

1) apologize,
2) punish its agents, and
3) pay compensation

"When a State complies with these requirements, no blame falls upon it on account of such injurious acts. But of ***course, in case a State refuses to comply with these*** requirements, it commits thereby an international delinquency, and its hitherto vicarious responsibility turns ipso facto into original responsibility." 36/

In short, the unlawful acts of administrative officials and members of the armed forces committed in their official capacities, though unauthorized, are imputed to the State, thus rendering it liable under international law. Lack of government authorization is irrelevant, because legal responsibility is premised on two factors:

1) the act occurred within the official's function, and
2) there is a duty to control officials and their subordinates.

The illegal actions of Minister Stevens and Captain Wiltse satisfy both criteria and will be addressed with reference to the standard of responsibility determined by the Harvard Draft Convention.

STANDARD OF RESPONSIBILITY

The standard of State liability is set forth in the 1961 Harvard Draft Convention on International Responsibility:

"A wrongful act or omission causing injury to an alien is 'attributable to a State,' as the term is used in this Convention, if it is the act or omission of any organ, agency, official, or employee of the State acting within the scope of the actual or apparent authority or within the scope of the function of such organ, agency, official, or employee." (emphasis added) (Article 15.) 37/

The Explanatory Note to the article states that "scope of the function" means the "general area of responsibility charged" to the official even if the conduct in question is not within the official's actual or apparent authority. "A member of the armed forces who, in the maintenance of public order, uses force against an alien in a manner not within his actual or apparent authority, may nevertheless by acting within the scope of his employment, or 'function'...Any injuries resulting to the alien therefrom would consequently engage the **responsibility of the State." [emphasis added]** 38/

1) APPARENT AUTHORITY

The dispatch of American troops, ordered by Minister Stevens and executed by Captain Wiltse, was unquestionably an act within the scope of their apparent authority as evidenced by the landing of American naval forces in Hawaii by former American Ministers and Naval Officials on the two prior occasions described below.

In 1874, after King Kalakaua was elected to the throne, Queen Emma's supporters rioted. At Kalakaua's request, the American Minister, Henry A. Peirce, signaled the American naval commander for assistance. Two American warships dispatched one-hundred-fifty sailors and marines to help quell the disturbance and guard government buildings for eight days. 39/

In 1889, another disturbance resulted in the landing of troops off the USS Adams.

The troops were confined to the diplomatic compound, although the Hawaiian Government was supplied with ammunition and later, marines to help maintain order. 40/

And on a third occasion, although troops were not actually landed, American Minister Stevens did exercise apparent authority over the marines. To ensure peace and order during the legislative elections of 1890, both American Minister

Stevens and British Commissioner Wodehouse ordered their naval commanders to keep their warships on alert in Honolulu Harbor. 41/

In light of these facts, it is indisputable that both Stevens and Wiltse had the apparent authority to dispatch American troops in Hawaii, regardless of whether it was expressly authorized or not. It is important to note that this is especially understandable in view of the fact that the American representatives were in the Pacific, isolated from their government, and therefore expected to act, in times of crises, in the interest of their country without its express authority regarding such unforseeable matters as insurrections.

Even assuming arguendo that neither Stevens nor Wiltse had the apparent authority to intervene with American armed forces, **such illegal conduct clearly falls within the "scope of their functions" and is within the "general area of responsibility charged"** to them.

According to the Explanatory Note mentioned above, " a member of the armed forces who, in the maintenance of public order, uses force against an alien in a manner not within his actual or apparent authority, may nevertheless be acting within the scope of his employment, or 'function'..." This hypothetical situation is obviously similar to the circumstances in question here. It is common knowledge that naval officers are acting within the scope of their function when commanding subordinate troops. It is also a function of a high-ranking American diplomatic envoy to act on behalf of the United States, in this case, purportedly to protect lives and property.

In short, the American Minister Stevens and Captain Wiltse of the USS Boston acted within the apparent scope of their authority when they caused American naval forces to land and occupy Hawaii. This is evident by the authority exercised by former American representatives in landing troops in Hawaii on prior occasions. Consequently, the United States is legally responsible for the unjustified actions of Stevens and Wiltse.

2) THE DUTY TO CONTROL SUBORDINATES

The Explanatory Note further explains that where acts or omissions are not within the scope of actual or apparent authority or scope of the function of an agent, the State is still responsible for such wrongful acts or omissions if any "superior" agent failed to use "due diligence in controlling the conduct of such subordinate...to the extent necessary to afford protection to an alien against such acts or ommissions." 42/

This means that even if neither official had any authority to act whatsoever, the United States is nonetheless responsible for Stevens' and Wiltse's actions because both failed to exercise due diligence in controlling the conduct of the armed troops.

Simply put, their acts or omissions in preventing their subordinates from occupying Honolulu render the United States ultimately liable for the illegal presence of the troops.

The same legal principle applies to Stevens' declaration of an American protectorate in disregard of U. S. Secretary of State Foster's order to desist from "setting the authority of the United States above that of the Hawaiian Government, in the capacity of Protectors..." 43/

Despite Stevens' absolute lack of authority to maintain the protectorate, the United States is responsible for this violation of international law because the United States has the duty to control its government officials, Stevens, and its subordinate agents, the marines.

Two cases illustrative of this duty to control are The Zafiro 44/ and Yamashito v. Wilhelm. 45/

In The Zafiro, the United States was held liable for the looting of property by Chinese crewmen of an American Supply vessel harbored in the Philippine Islands, because the commanding officers failed to control the crew. In Yamashita, a capital case, the defendant, a commander of armed forces, was held responsible for breaching his duty to control his troops who committed war crimes against the United States.

Other examples, around 1893, demonstrating a government's duty to control agents or an official's duty to control subordinates are described below. It is important to note that in each instance, the victims were fully indemnified.

1. In 1885, rioters in Rock Springs, Wyoming attacked Chinese citizens. The Chinese Minister to the United States requested full compensation for the personal injuries and loss of life and property.

The United States Secretary of State requested Congress to "grant pecuniary relief." 46/

2. In 1891, a New Orleans mob killed eleven Italian arrestees who were charged with the murder of the City's Chief of Police. The Italian Minister demanded that the guilty parties be tried and that an indemnity be paid to the victims' families. In 1892, the United States Secretary of State paid $24,330 to the Italian Government. 47/

3. In 1893, a mob destroyed a building at Anatolia College, founded by American citizens in Turkey. The Turkish Government punished the wrongdoers and promised to pay compensation. 48/

4. In 1895, American property in Turkey was destroyed by rioters, although Turkish soldiers were present. In one of his notes to the American Minister to Turkey, United States Secretary of State Sherman wrote, "A government being able to quell and not quelling such disorders, and damage to American property having resulted, the United States contends that Turkey can be held responsible under a well-recognized principle of international law." In 1901, the Turkish Government compensated the Americans for their loss of property. 49/

In summation, both Captain Wiltse and Minister Stevens acted within the scope of their apparent authority in landing the naval forces. Even if neither official had such authority, however, the United States is nevertheless responsible for these illegal actions, because it had the duty to control both officials and their subordinates, the marines. If this legal duty were not imposed, governments could always evade liability by merely instructing their agents to refrain from violating international law and then by rejecting actions that cause harm to others. Governments cannot reasonably expect to enjoy the benefits accruing to them through their agents' dealings yet simultaneously avoid obligations imposed on them by the actions of the very same agents.

CONCLUSION

The United States is vicariously responsible for the dispatch of American troops and their occupation of Hawaii, actions which facilitated the successful overthrow of the Hawaiian Government - both Captain Wiltse and Minister Stevens exercised their apparent authority over the marines, as had also been done in Hawaii in 1874, 1889, and 1890. Whether or not the United States expressly authorized this military assistance is therefore irrelevant. The United States is legally liable because both of its agents acted within the scope of their apparent authority.

The United States is originally responsible for Minister Stevens' illegal interference in the political affairs of Hawaii. Having authorized Minister Stevens' premature recognition of the Provisional Government, the United States breached its duty of noninterference in the politics of a foreign State.

Even if neither Captain Wiltse nor Minister Stevens had any authority, express or apparent, with regard to these events, the United States would still be ultimately liable for **their illegal conduct, because it failed to control the agents** involved - the Captain, the Minister, and the military troops.

Applying the international law of agency, which was well-established by 1893 and continues to govern, the United States' failure to apologize formally to the Hawaiian government, punish its agents, and pay compensation constitutes an international delinquency against the native Hawaiian people.

FOOTNOTES

1. 1 Native Hawaiians Study Commission Report on the Culture, needs and concerns of Native Hawaiians 25 (1983) hereinafter referred to as #1
2. 2 Native Hawaiians Study Commission Report on the Culture needs and concerns of Native Hawaiians 54 (1983) hereinafter referred to as #1
3. #1 pg. 294
4. #1 pg. 294
5. #1 pg 294
6. #1 pg 295
7. #1 pg 295
8. #1 pg 285-286
9. #1 pg 278-279
10. #1. pg 296
11. #2 pg 63
12. #2 pg 64
13. #1 pg 297
14. #1 pg 297
15. #1 pg 298
16. #1 pg 298-299
17. #2 pg 77
18. #2 pg 77
19. Unpub. MS, MacKenzie and Van Dyke, (April 23, 1983), passim

20. 14 Marjorie M. Whiteman, Digest of International Law 20-21(1970) quoting I. LAUTERPACHT, OPPENHEIM'S INTERNATIONAL LAW 884 (1955)

21. 14 Marjorie M. Whiteman, Digest of International Law 20 (1970) quoting SCHWARZENBERGER, A MANUAL OF INTERNATIONAL LAW 82 (1967)

22. 1933 P.C.I.J., Ser. A/B, No 53

23. 1933 P.C.I.J., Ser. A/B, No 53

24 1933 P.C.I.J., Ser. A/B, No 53

25 1933 P.C.I.J., Ser. A/B, No 53

26. **Robert H. Stauffer, THE HAWAI'I - UNITED STATES TREATY OF 1826, 17 THE HAWAIIAN JOURNAL OF HISTORY 51 (1983).**

27. Robert H. Stauffer, THE HAWAI'I - UNITED STATES TREATY OF 1826, 17 THE HAWAIIAN JOURNAL OF HISTORY 53 (1983) quoting MILLER, TREATIES p. 275

28. #2 pg 22

29. I. LAUTERPACHT, OPPENHEIM'S INTERNATIONAL LAW 337-338 (1955)

30. I. LAUTERPACHT, OPPENHEIM'S INTERNATIONAL LAW 359 (1955)

31. 7 Marjorie M. Whiteman, DIGEST OF INTERNATIONAL LAW 143 (1970) quoting 155 LNTS 259, 267

32. 7 Marjorie M. Whiteman, DIGEST OF INTERNATIONAL LAW 143 (1970) quoting 3 FOREIGN AFFAIRS MANUAL (FAM) (UNIFORM STATE/AID/USIA REGULATIONS) 10. 735-211 (g) (12-31-68)

33. #2 pg 66

34. FOSTER to STEVENS, February 11, 1893, Department of State, Papers Relating to the Foreign Relations of the United States; (Washington, D.C., 1894), Review I, No. 3; (1932); p. 169

35. I. LAUTERPACHT, OPPENHEIM'S INTERNATIONAL LAW 337-338, 362-363 (1955)

36. I. LAUTERPACHT, OPPENHEIM'S INTERNATIONAL LAW 337-338, 362-363. (2955)

37. 8 MARJORIE M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 809 (1967)

38. 8 MARJORIE M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 809 (1967)

39. RICHARD A. WISNIEWSKI, THE RISE AND FALL OF THE HAWAIIAN KINGDOM: (Honolulu, Hawaii, Pacific Basin Enterprises 1979) p. 66

40. same as 38 p. 88

41. same as 38 p. 89

42. **8 MARJORIE M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 809 (1967)**

43. #1 pg 298

44. 5 HACKWORTH, DIGEST OF INTERNATIONAL LAW 707 (1943)

45. YAMASHITA v. WILHELM, 327 U.S. 1-81 (1945)

46. STATE RESPONSIBILITY: "FORCE MAJEURE" and "FORTUITOUS EVENT" AS CIRCUMSTANCES PRECLUDING WRONGFULNESS: SURVEY OF STATE PRACTICE, INTERNATIONAL JUDICIAL DECISIONS AND DOCTRINE, Prepared by the Codification Division of the Office of Legal Affairs (1977) p. 122

47. Ibid at 126

48. Ibid at 127

49. Ibid at 130-131

Senator MATSUNAGA. Thank you very much. Our next witness is from the William S. Richardson School of Law, University of Hawaii, Mr. Jon Van Dyke.

STATEMENT OF JON VAN DYKE, PROFESSOR OF LAW, UNIVERSITY OF HAWAII

Mr. VAN DYKE. Thank you, Senator Matsunaga and Congressman Akaka. I have submitted to the committee clerk two documents; a summary that I wrote with Melody MacKenzie about your experience last year in participating in the hearings of the Native Hawaiian Study Commission, and second a much larger document on the constitutionality of the Office of Hawaiian Affairs.

I'd like to briefly summarize what's in these two documents to aid the committee in its deliberations today. Melody and I went to the 2-day hearing, the last hearing, of the Native Hawaiians Study Commission in March last year to represent the Office of Hawaiian Affairs, but came back bewildered by the experience. Because we found that the mainland Commissioners were more interested in displaying their mastery of manipulating meetings than in addressing the substantive issues that were before the Commission.

The legal sections of the voluminous report prepared by the mainland Commissioners were apparently written by attorneys at the Justice Department under the direction of supervision of Carol Denkins, who was then the Assistant Attorney General for Land and Natural Resources. I was depressed to see that she's now been nominated by the President to be Deputy Attorney General. And I'd like to urge the members of this committee to do everything they can to derail that nomination if possible, because if her performance on the Native Hawaiians Study Commission is indicative of her skills in general, then she does not deserve this high office. And the most telling problem had to do with this question of agency, which Cecilia has just talked about, which is the crucial issue on this matter. As Cecilia has said, the facts are not the major dispute. There are, of course, factual differences between the two volumes. But what really is at issue is the law that one would apply to that. And as Cecilia said, there is a very ancient tradition in holding a master liable for the acts of the servant; holding the employer liable for the acts of the other employees done in the course of duty. And this extends to governments as well. If we apply that principle to the actions of the Minister Stevens in 1893 and Capitan Wiltse, we reach the conclusion that the Government is liable for the harm suffered by the victim of the agency of the U.S. Government.

The Government had the capacity to carefully select its agent, and the opportunity to train its agents about the proper use of authority. If a government sends an agent to an island kingdom over 5,000 miles away, the Government must expect the agent to exercise a certain amount of discretion with regard to the use of the agent's power. The Government must, therefore, anticipate the types of actions that are appropriate and instructing the agents appropriately. If the Government fails to do so, then the Government must be liable for the harm caused.

Now, the extent of harm and the extent to which the Government subsequently tries to correct the harm are, of course, relevant in determining how much compensation is owed. But the principles are clear that a government that sends agents to commit acts that contribute to an overthrow must bear responsibility for the actions of the agents. President Cleveland admitted this. And the U.S. Senate, as Senator Matsunaga knows, declared that same recognition several years ago in one of the earlier versions of this bill.

The six mainland Commissioners led by Ms. Denkins refused to acknowledge any of this responsibility. The dynamics of the Commission were interesting to us. Three of the mainland Commissioners were very passive. One said virtually nothing during the whole period. We felt at a certain point that some of the nonlawyers might have some nervousness about the legal analysis that Ms. Denkins and her subordinates developed, but a full discussion of these issues never took place; in part because of the procedural skill of the dominant mainland Commissioners who clearly had substantial experience in controlling meetings. The three Commissioners from Hawaii simply decided they were not interested in trying to keep up with the procedural manipulations of the mainland Commissioners and finally decided that they would rather file a minority report, rather than keep battling to try to win over one or more of the passive mainland Commissioners. And instead, what we are doing here is trying to raise this issue once again in another form. As I sat during those meetings, I had the strange sensation of seeming to see the whole 19th century of Hawaiian history pass before my eyes, in which the fast-talking and gold-oriented Westerners were succeeding in manipulating the Hawaiians through their efforts at imposing Western values on the situation.

The other topic that I'd like to mention briefly is the question of the status of native Hawaiians. David Getches has, in substantial detail, talked about the analogies between native Hawaiians and other native groups. There's no question, based on my research, that the various programs that have been set up for Hawaiians, the Hawaiian Homes Commission and Office of Hawaiian Affairs and so on, are constitutional under a long series of precedents at the Federal level. Nonetheless, we continually see questions raised about whether there is some constitutional problem in having a special program for a single racial group.

If I could just take one more moment, I'd just like to quickly run through the analysis that we summarized in this very long memo that we made available to the committee and to the general public.

The Federal courts have historically viewed preferences for native groups, not as a racial preference, but rather as a political preference, a status preference. Native groups, it is seen, have a particular historical relationship with the U.S. Government upon a long series of unique kind of—many of them unfortunate—relationships. The court thus says that any program set up for natives is constitutional as long as its rationally linked to the fulfillment of the Government's unique obligation to native groups. The policy arguments for this, I think, are also worth mentioning. Every other racial group in our country, to some extent, made a conscience or unconscience decision to live in a multiracial society. And thus left their home to come to this pluralistic society. Native groups never made that choice. They simply were here when the rest of us came. Unlike every other ethnic group, native groups have no mother culture that they can look to where their culture is preserved. Caucasions can look to Europe. Asians can look to their various parts of their ethnic parentage in Asia. Native peoples only have their spot in the United States to look to if they're going to maintain their culture.

We need, therefore, to give them a certain domain or certain protection within which they can operate and maintain their culture. For all these reasons, it is clear there are constitutional—the Congress can and the State of Hawaii can establish appropriate programs that give Hawaiians preference and that recognize their unique needs as a culture in our society.

Thank you very much.

[The prepared statement of Mr. Van Dyke follows:]

U.S. Senate Committee on Energy and Natural Resources April 16, 1984

THE NATIVE HAWAIIAN STUDY COMMISSION: A BIZARRE CHARADE

Melody MacKenzie
(Executive Director, Native Hawaiian Legal Corporation)

and

Jon Van Dyke
(Professor of Law, University of Hawaii at Manoa)

We attended the final two-day meeting of the Native Hawaiian Study Commission in March in Washington representing the Office of Hawaiian Affairs. We came back bewildered, because we found that the mainland commissioners were more interested in displaying their mastery of manipulating meetings than in addressing the substantive issues.

This Commission had been set up by Congress in 1981 (after a long legislative struggle) to look at the problems of the Native Hawaiians and to recommend to Congress what legislation might be appropriate in light of the past treatment of these native people. The Commission immediately became a political football. President Carter appointed nine commissioners hurriedly on his last day of office while supervising the return of the U.S. hostages from Iran. President Reagan fired the Carter commissioners and tried to abolish the Commission but later appointed his own Commissioners when he concluded he could not unilaterally abolish the Commission. According to the legislation, six were from the mainland and three were from Hawaii.

The Hawaiian community did not know what to make of this, but tried their best to inform the Reagan commissioners about their plight. The mainland commissioners were apparently not particularly moved by the testimony of the Hawaiians.

We were asked to go to this final meeting by the Office of Hawaiian Affairs because during previous meetings the mainland commissioners had brought attorneys from the Justice Department who spoke at the meetings to defend the majority's report. The majority's conclusion was that the United States as a nation did not commit any wrong during the overthrow of the Hawaiian Kingdom and therefore that no reparations are now owed to the Hawaiian people.

Their legal analysis included extensive references to cases involving American Indians interpreting those cases narrowly in terms of their specific facts. These cases do not apply directly to the Hawaiian situation because the history here is different, but the spirit and purposes of those cases can be consulted for guidance. The most important observation to be seen from looking at the treatment of other native people by the United States is that every other native group except the native Hawaiians have had a formal settlement or claims commission established to provide a mechanism to settle the native claims.

We expected to make arguments about the Hawaiian history and legal consequences of that history to illustrate the analogies between the treatment of the Hawaiians and other native peoples by the United States and thereby show the appropriateness of providing some redress for the 1893 overthrow. Our ability to speak at the meeting was, however, immediately challenged by the mainland commissioners, and we never had a chance to engage in any formal dialogue on these important issues. In fact, virtually all the discussion focused on procedural questions about how the report was to be structured and so on, and very little attention was given to the question of what happened and what the appropriate legal consequences should be.

The report of the six Reagan-appointed mainland commissioners agrees that officers of the United States took actions that contributed to the overthrow of the Hawaiian Kingdom. In particular, John L. Stevens, who held the post that would today be called United States Ambassador, ordered U.S. Marines to come ashore from the U.S.S. Boston which was then in Honolulu Harbor. These Marines took up positions adjacent to the Queen's Palace in a manner that was clearly threatening to the kingdom.

Stevens, in his capacity as representative of the U.S. government, quickly recognized the revolutionary government as legitimate, thus indicating to the Queen that bloodshed would follow if she were to resist. A few weeks later, a new U.S. President was inaugurated (Grover Cleveland) who renounced the actions of Stevens and refused to annex the Hawaiian Islands to the United States.

The legal question that is raised is whether the actions of the U.S. Ambassador and U.S. military officers impose a responsibility upon the United States government. This responsibility would appear to exist even if we assume for the purposes of argument that these actions were not officially authorized by the United States government.

The Law of Agency

The legal question is whether a government that gives its agents the symbols of authority and the power to use force for the purpose of coercing activity owes a responsibility to the victims against whom such authority is improperly exercised. Under the current law enforced in the United States the answer to this question is clearly yes. If, for instance, a police officer while in uniform uses a nightstick or gun to injure a citizen without cause, the police officer would be liable to compensate the victim for the injuries received and the county that had employed the police officer would also be liable if the police officer could not personally pay off the judgment.

The theory for this rule rests on two sound principles. First, the government or employer of the police officer is better able to absorb the loss and spread it among the citizenry than is the individual victim who may be crippled or unable to earn a living after the assault. Second, the government that employed the police officer could have taken action to prevent this type of occurence by carefully screening persons hired to be police officers and giving them better training about their responsibilities.

This rule, charging the employer with liability for the acts of the agent taken during the course of employment, applies equally to a private employer as to a government. It is not a particularly new rule, but is based on very ancient "master-servant" or agency law that we have inherited from England.

If we apply this principle to the actions of the U.S. Ambassador in 1893 we would appear to reach the conclusion that the government is liable for the harm suffered by the victim of the agents of the United States government. The government had the capacity to carefully select its agents and the opportunity to train the agents about the proper use of authority. If a government sends agents to an island kingdom over 5,000 miles away from the government's capital, the government must expect the agents to exercise a certain amount of discretion with regard to the use of the agents' power. A government must therefore anticipate the types of actions that are appropriate and instruct the agents appropriately. If the government fails to carefully instruct its agents, and the agents use their power to harm the citizens of the kingdom, the government ~~which~~ that sent the agents with their military power must logically bear responsibility for the agents' action.

The extent of the harm and the extent to which the government subsequently tried to correct the harm are of course relevant in determining how much compensation is owed. But the principle seems to be clear that a government that sends agents who commit acts that contribute to an overthrow must bear responsibility for the actions of the agents. President Cleveland admitted that a wrongful act had taken place shortly after the overthrow, as did the U.S. Senate several years ago in one of the earlier bills in the legislative history that established this Commission. The six mainland Commissioners refused, however, to acknowledge any U.S. responsibility.

The Views of the Mainland Commissioners

The legal sections of the voluminous report prepared by the mainland commissioners Volume I were apparently written by attorneys at the Justice Department under the supervision of Carol E. Dinkins who ~~is~~ was then an Assistant Attorney General for the Lands and Natural Resources Division and was one of the most vocal of the mainland commissioners. Stephen P. Shipley, Executive Assistant to then-Secretary of Interior James Watt, and Diane K. Morales, now with the Civil Aeronautics Board, also participated actively in the discussions. The other three commissioners, Carl A. Anderson (Department of Health and Human Services), James C. Handley (Department of Agriculture), and Glenn R. Schleede (formerly with the Office of Management and Budget, now in private industry) were substantially more passive and one, Mr. Handley, said virtually nothing whatsoever during the two-day meeting.

During a brief priod on the second morning when the question of the government's responsibility for its agents was addressed, it appeared that some of the non-lawyers among the commissioners might have been developing doubts about the legal analysis prepared by Ms. Dinkins and her subordinates at the Justice Department. A full discussion of this issue never took place, however, in part because of the procedural skill of the dominant mainland commissioners who clearly had substantial experience in controlling meetings, and in part because the three Hawaiian commissioners found it hard to deal with this highly emotional issue in a matter-of-fact legalistic manner.

The three commissioners from Hawaii (former Representative Kina'u Boyd Kamali'i, Maui Corporation Counsel H. Roger Betts, and Winona K.D. Beamer of the Kamehameha Schools), were more acquainted with the island style of decisionmaking which tends to treat all participants with respect than to the hard-ball style of the Reagan appointees. They were not interested in trying to keep up with the procedural manipulations of the mainland commissioners and finally decided that they would rather simply file a minority report than keep battling to try to win over one or more of the passive mainland commissioners.

As we sat in the background during these two days of meetings, we had the strange sensation of seeming to see the whole 19th century of Hawaiian history pass before our eyes, ~~[illegible]~~ in which the fast-talking and goal-oriented Westerners were succeeding in manipulating the Hawaiians through their efforts at imposing Western values on the situation. Like Queen Liliuokalani in 1893, the Hawaiian commissioners were unwilling to play the Western game and thus chose instead to withdraw from the battlefield, with at least their personal integrity intact, in hopes of prevailing in a subsequent forum.

Although this Commission has now more or less completed its work, the question whether the Hawaiians are entitled to reparations or restitution for the events that took place in the 1890's remains very much an open one. The legal questions need a much more careful analysis than is found in the majority report. And the moral and equitable question, whether the United States government should now provide some mechanism for righting the wrong caused at least in part by the agents of the U.S. government, remains unanswered.

Memorandum prepared
in the case of *Office of
Hawaiian Affairs v. Yamasaki, et al.*

THE CONSTITUTIONALITY OF THE OFFICE OF HAWAIIAN AFFAIRS

Jon Van Dyke

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D. HONOLULU ADVERTISER, Oct. 20, 1983, at A-3, col. 5.

THE CONSTITUTIONALITY OF THE OFFICE OF HAWAIIAN AFFAIRS

Jon Van Dyke

I. INTRODUCTION

Defendants (in the case of *Office of Hawaiian Affairs v. Yamasaki; et al*) have raised as their Eighth Defense to this cause of action the argument that the existence of the Office of Hawaiian Affairs and the provisions that establish it (Hawaii Constitution, Arts. XII and XIII, and Hawaii Rev. Statutes, Chapter 10) are unconstitutional on their face, "in violation of the due process and equal protection clause under the fifth and fourteenth amendments of the United States Constitution and in violation of the privileges and immunity clause." Defendants' Answer filed Sept. 28, 1983.

The implications of this surprising argument are immense, because if the Defendants were to prevail on this argument, then the Hawaiian Homes Commission--which has been serving the Hawaiian community since 1921--would appear also to the unconstitutional, along with the many federal programs aiding Hawaiians and a vast array of federal and state programs aiding native Americans in other parts of the United States (see Sections III and IV, infra).

Although these implications are staggering, the analysis of this argument is not difficult nor is the result in doubt. Both state and federal decisions clearly uphold the constitutionally of programs for native peoples, and the Office of Hawaiian Affairs falls squarely within these precedents as a constitutionally permitted program to benefit native Hawaiians.[1]

II. THE OFFICE OF THE HAWAIIANS AFFAIRS (OHA)

The Office of Hawaiian Affairs (OHA) was established in 1978 by the Constitutional Convention and the voters of Hawaii for the purpose of establishing a public trust entity for the benefit of the people of Hawaiian ancestry. See Hawaii Constitution, Art. XII, secs. 5-6; H.R.S. secs. 10-1 to 10-16. The delegates to the 1978 Constitutional Convention expected that OHA would "provide Hawaiians the right to determine priorities which [would] effectuate the betterment of their condition and welfare and promote the protection and preservation of the Hawaiian race, and that it [would] unite Hawaiians as a people." Committee of the Whole Report No. 13, I *Proceedings of the Constitutional Convention of Hawaii of 1978* at 1018. The delegates intended to "provide a receptacle for any funds, land or other resources earmarked for or belonging to native Hawaiians, and to create a body that could formulate policy relating to all native Hawaiians and make decisions on the allocation of those assets belonging to native Hawaiians." Standing Committee Report No. 59, I

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[1] In this memorandum, the term "native Hawaiian" is used broadly to refer to all persons who have descended from the aboriginal peoples who inhabited the Hawaiian Islands prior to 1778. The term is thus used to link and compare these people to native Americans inhabiting other parts of the United States, and not to refer to any specific blood quantum requirement. See note 2, *infra*, for some of the more specific statutory definitions.

Proceedings of the Constitutional Convention of Hawaii of 1978 at 644. Moreover, in looking to the future the delegates said "the office [would] be able to receive and administer any reparations money, which [would] probably be awarded to all native Hawaiians regardless of blood quantum." Id.

The Con Con's Committee on Hawaiians Affairs closely examined rights granted to other native peoples such as American Indians. The Committee found that (1) American Indians had "traditionally enjoyed self-determination and self-government," (2) they retained "power to make their own substantive rules in internal matters," and (3) "they remain a separate people with the power of regulation over their internal and social problems, although no longer possessed of the full attribution of sovereignty." The delegates intended OHA "to grant similar rights to Hawaiians," furthering "the cause of Hawaiian self-government," and making OHA "more responsive to the needs of its constituents." Citing the "unique legal status of Hawaiians," the delegates justified the qualification that one had to be of Hawaiian blood in order to vote or run for office as a trustee. The delegates said the qualification did not constitute discrimination but rather was "directed to participation by the governed in the governing agency." Committee of the Whole Report No. 13, I Proceedings of the Constitutional Convention of Hawaii of 1978 at 1019.

The voters of Hawaii approved the constitutional amendments establishing the Office of Hawaiian Affairs in

November 1978 (Hawaii Constitution, Art. XII, secs. 5-6), and in 1979 and 1980, the State Legislature enacted legislation implementing the constitutional provisions. H.R.S. secs. 10-1 to 10-16. H.R.S. sec. 10-13.5--which is central to this litigation --provides that 20 percent of all funds derived from "the public land trust" shall be expended by OHA for the betterment of conditions of native Hawaiians. The "public land trust" is defined in H.R.S. Sec. 10-3(1), and this definition is included in full because of its importance to this case:

> "For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as 'available lands' by section 205 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e). . ."

This language indicates explicitly that the public land trust comes from the federal lands obtained at the time of annexation (1898) that were transferred to the State at the time of statehood (1959). When it received these lands from the federal government in 1959, the State of Hawaii agreed to use them for several specified purposes, including "the betterment of the conditions of native Hawaiians." Admissions Act of March 18, 1959, sec. 5(f), Pub. L. No. 86-3, 73 Stat. 4 (hereinafter referred to as Admissions Act). The establishment of the Office of Hawaiian Affairs and the granting to OHA of 20 percent of the funds derived from the public land trust are efforts by the State of Hawaii to fulfill these obligations toward native Hawaiians.

III. DECISIONS OF THE STATE COURTS OF HAWAII CLEARLY SUPPORT THE CONSTITUTIONALITY OF PROGRAMS TO BENEFIT NATIVE HAWAIIANS

Although no case has yet focused on the recently-created Office of Hawaiian Affairs, the Hawaii Supreme Court has considered issues relating to the Hawaiian Homes Commission on a number of occasions, and these decisions contain no doubts about the constitutionality of its mission to aid native Hawaiians.

A. THE HAWAIIAN HOMES COMMISSION

In 1921, the U.S. Congress passed the Hawaiian Homes Commission Act setting aside more than 200,000 acres of land in Hawaii specifically for the benefit of native Hawaiians. Hawaiian Homes Commission Act, 1920, Act of July 9, 1921, 42 Stat. 108 (hereinafter HHCA). The title to these lands, which remained with the United States prior to statehood, passed to the State of Hawaii upon its admission into the union in 1959. See Admissions Act, *supra*, sec. 4. The HHCA was adopted as state law at the time of statehood in the Hawaii State Constitution, Art. XII(1). This federal-state statute establishes the Hawaiian Homes Commission to oversee the Department of Hawaiian Home Lands, which administers these lands. HHCA, *supra*, sec. 202(a).

The U.S. Congress has required that at least four of the seven members of the Commission "shall be descendants of not less than one-fourth part of the blood of the races inhabiting the Hawaiian islands previous to 1778." Id. The primary responsibility of the Department of Hawaiian Home Lands is to lease the tracts of its lands to native Hawaiians (id., secs. 207-208), who are defined in this statute as the descendants "of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778." Id., sec. 201(7).

Similarly, the Office of Hawaiian Affairs is also charged with "the betterment of conditions of native Hawaiians and "Hawaiians". H.R.S. sec. 10-3(1)-(2). The Hawaii legislators adopted the HHCA definition of "native Hawaiians" in defining the beneficiaries of the funds from the public land trust that are administered by OHA. See H.R.S. sec. 10-2(4), 10-3, and 10-13.5. [2]

B. AHUNA V. DEPT. OF HAWAIIAN HOMES LANDS

The most recent Hawaii Supreme Court case involving the Hawaiian Homes Commission Act is Ahuna v. Dept. of Hawaiian Homes Lands, 64 Hawaii 327, 640 P.2d 1161 (1982), in which a unanimous court gave a broad reading of the trust obligation that the Department of Hawaiian Home Lands and the Hawaiian Homes Commission owes to native Hawaiians. 64 Hawaii at 338. This case is particularly important to the present litigation because the Hawaii Supreme Court specifically analogizes the native Hawaiians to other native Americans and draws upon the rich body of federal cases involving mainland natives to determine the trust duties owed to native Hawaiian homesteaders. Id. at 339-40.

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[2] The definition adopted by the Legislature in 1979 for OHA adopts the HHCA definition but adds some extra language to avoid any ambiguities. H.R.S. sec. 10-2(4) defines "native Hawaiians" as

> "any descendant of not less than one-half part of the of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended, provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii. . ."

OHA is also charged with the "betterment of conditions of Hawaiians." H.R.S. Sec. 10-3(2). H.R.S. Sec. 10-2(5) defines "Hawaiians" as

> "any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii. . ."

The constitutional question raised by the Defendants is the same for both missions of OHA--to assist "native Hawaiians" and "Hawaiians". Both groups are descendants of aboriginal peoples and thus both have the special political status under U.S. law described *infra*. The trust fund involved in the present litigation is, however, intended solely for the benefit of "native Hawaiians"--those with 50 percent or more Hawaiian blood--which is precisely the same group benefited by the Hawaiian Homes Commission Act.

Ahuna involved an appeal by the Department of Hawaiian Homes Lands from an order directing it to issue a full ten-acre lease. The Hawaii Supreme Court affirmed the judgment of the lower court and held that the Department had the obligation to administer the home lands trust solely in the interest of the native Hawaiians beneficiaries. Id. at 340-41. The Hawaii Supreme Court reviewed the history of the Hawaiian Homes Commission Act and concluded that the Act was passed by the federal government to fulfill in part its obligation as trustee toward the aboriginal native Hawaiian people. Id. at 336-37. The State of Hawaii accepted this responsibility at the time of statehood and therefore "must adhere to high fiduciary duties normally owed by a trustee to its beneficiaries." Id. at 338.

To determine the breadth of this trust responsibility, the Hawaii Supreme Court turned to mainland federal decisions involving American Indians, Eskimos, and Alaska natives:

> Essentially, we are dealing with relationships between the government and aboriginal people. Reason thus dictates that we draw the analogy between native Hawaiian homesteaders and other native Americans.

Id. at 339 (emphasis added). After surveying the applicable mainland analogies, the Hawaii Supreme Court concluded that conduct of the Department of Hawaiian Home Lands should be measured by "the same strict standards applicable to private trustees" (*id.*), and this obligation requires that the trust must be administered "solely in the interest of the beneficiary" and with such "reasonable skill and care to make trust property productive." *Id.* at 340. The *Ahuna* Court emphasized that the primary purpose of "the Hawaiian Homes Commission Act was the rehabilitation of native Hawaiians." *Id* at 336. See also *In re Ainoa*, 60 Hawaii 487, 488, 591 P.2d 607 (1979); *Hawaiian Homes Commission v. Bush*, 43 Hawaii 281 (1959); and *Yuen v. Kimikaua*, 37 Hawaii 8 (1944), which deal with the Hawaiian Homes Commission. All four cases recognize the Hawaiian Homes Commission as a legitimate constitutional body which has the obligation to administer the homelands trust solely in the interest of the native Hawaiian beneficiaries.

C. OTHER FEDERAL, TERRITORIAL AND STATE OPINIONS CONCLUDE THAT SPECIAL PROGRAMS FOR NATIVE HAWAIIANS ARE CONSTITUTIONAL

The federal government acknowledged its continued trust responsibility toward native Hawaiian in the 1959 Admissions Act, *supra*, when it transferred some of the ceded lands to the State of Hawaii. Section 5(f) of this Act identified "the betterment of the condition of native Hawaiians" as one of the five specified purposes the proceeds of these ceded lands are to be used for. The State of Hawaii was therefore fulfilling the trust obligation it inherited from the federal government when it created the Office of Hawaiian Affairs and determined that OHA should administer 20 percent of the proceeds from the public land trust for the benefit of native Hawaiians. See H.R.S. sec. 10-1(a) where this obligation is explicitly acknowledged.

Prior to statehood, officials of the Territory of Hawaii repeatedly recognized the constitutionality of special programs for native Hawaiians when questions were occasionally raised about the Hawaiian Homes program. During the 1920 Congressional hearings, for instance, Harry Irwin, the Attorney General of the Territory, surveyed various constitutional theories and concluded that Congress could set aside lands "for the exclusive use of members of the Hawaiian race. . . for the purpose of rehabilitating the race and preventing its ultimate extinction." H. Doi, Legal Aspects of the Hawaiian Homes Program 41 (Legislative Reference Bureau Rpt. 1a, 1964), citing Hearings on H.R. 13500 To Amend Act to Provide a Government for the Territory of Hawaii, to Establish an Hawaiian Homes Commission, and for Other Purposes Before the Senate Committee on Territories 66th Cong., 2d Sess. 134-36 (1920). (See also discussion in section IV. D.2, infra).

This question arose again at Hawaii's 1950 Constitutional Convention, and the committee charged with reviewing the Hawaiian Homes Commission Act reaffirmed the 1920 conclusion that the Act is constitutional:

> "The Act is not discriminatory. It is very a progressive piece of legislation designed to aid an aboriginal people survive the sudden impact of a new highly

> complex civilization on their lives. . . It would be more discriminatory to repeal the Act."

1 Hawaii Constitutional Convention of 1950, Proceedings 171 (Standing Committee Report No. 33).

The delegates to the 1950 Convension also considered whether the anti-discrimination provision in the Bill of Rights section (Art. I, sec. 5 of the current Hawaii Constitution) conflicted with the Hawaiian Homes provisions and concluded that "the Bill of Rights section on discrimination was not applicable to the Hawaiian Homes section. . ." H. Doi, supra, at 51, summarizing debate at 2 Hawaii Constitutional Convention of 1950, Proceedings 34-38. "The expressed opinion of. . . the majority of the delegates to the [1950] state Constitutional Convention who spoke on aspects of the problem is that the Hawaiian Homes program is constitutional." H. Doi, supra at 54. The Convention delegates subsequently agreed to include the Act in the state Constitution, which "may be interpreted as affirming the constitutionality of the Hawaiian Homes program." Leglislative Reference Bureau, Hawaii Constitutional Convention Studies 1978, Article X: Conservation and Development of Resources; Article XI: Hawaiian Homes Lands 95 (1978).

More recently, the Attorney General of the State of Hawaii has explicitly recognized this trust obligation and the constitutional validity of the special political status of native Hawaiians in the context of the creation of the Office of Hawaiian Affairs on at least two occasions: Attorney General's

Opinion No. 80-8 (July 8, 1980) (re the constitutionality of the Office of Hawaiian Affairs)(attached as Appendix B) and Defendant's Motion to Dismiss Complaint or in the Alternative for Summary Judgment in Hoohuli v. Ariyoshi, Civ. No. 81-0182 (filed Aug. 13, 1981) (excerpts attached as Appendix C). On October 19, 1983, Governor George Ariyoshi was quoted as saying that he personally feels that OHA is constitutional, despite Defendant's argument in the present case:

> "I had nothing to do with that representation. . . . I have no intention of raising the constitutional question. So far as I am concerned, I see it (OHA) as constitutional."

Honolulu Advertiser, Oct. 20, 1983, at A-3, col. 5 (attached as Appendix D).

IV. FEDERAL DECISIONS ARE UNEQUIVOCAL IN RECOGNIZING THAT SPECIAL PROGRAMS FOR NATIVE PEOPLES ARE CONSTITUTIONAL.

A. FEDERAL DECISIONS HAVE UPHELD SPECIAL PROGRAMS FOR NATIVE AMERICANS REPEATEDLY IN A WIDE VARIETY OF SITUATIONS

The United States Supreme Court has consistently upheld special programs to serve native Americans and preferences designed to preserve and promote their culture and economic development. These programs and preferences are enacted and upheld not for racial reasons, but rather because of "the unique legal status" that Indians and other native groups have had in American law. Morton v. Mancari, 417 U.S. 535, 551 (1974) (emphasis added). This unique legal status developed as a result of the "special relationship" that exists between the United States government and native peoples, a relationship that arose out of the historical events whereby the United States overcame the natives and took possession of their lands. Id. at 552, quoting from Board of County Comm'rs. v. Seber, 318 U.S. 705, 715 (1943).

Early cases described this relationship as one involving "wards" needing protection from their "guardian", the federal government. See, e.g., Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1,17 (1831). Now we avoid this "overly paternalistic approach" (Morton v. Mancari, supra, 417 U.S. at 553), but still recognize the importance of the special legal status of natives. The Hawaii Supreme Court in the Ahuna case, for instance, built on the old "ward" concept from previous generations to develop the idea that the government stands in the role of "trustee" toward native Hawaiians. Ahuna v. Department of Hawaiian Home Lands, supra, 64 Hawaii at 336-38. Special programs and preferences for native groups are now upheld by the federal courts as long as they "can be tied rationally to the fulfillment" of the government's "unique obligation" toward its native peoples. Id. at 555. See also Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 85 (1977).

Morton v. Mancari, supra, upheld a hiring preference for Indians for positions in the Bureau of Indian Affairs (25 U.S.C. sec. 472.). (This preference is like the requirement in Art. XIII, Sec. 5, of Hawaii's Constitution that only persons of

Hawaiian ancestry can serve as Trustees of OHA.) The U.S. Supreme Court, in an opinion written by Justice Blackmun, viewed this not as a "racial" preference but as

> "an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups. It is directed to participation by the governed in the governing agency."

417 U.S. at 554. In footnote 24 (*id*. at 553), Justice Blackmun stated that further evidence for the view that the employment preference at issue in *Morton v. Mancari* was "political" rather than "racial" could be found by noting that the preference involved did not apply to all Indians, but only those in "federally recognized tribes." [3]

Some commentators have referred to the Court's distinction between "political" classifications and "racial" classifications as a "legal fiction" (see, *e.g.*, Note, *Supreme Court Upholds the Validity of Preferential Treatment of Indians in Land Disputes*, 13 Creighton L. Rev. 619, 631 (1979)), and indeed some cases have referred to Indians in racial terms, granting to them the same types of preferences as granted in

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[3] The Court reached the conclusion that the classification was "political" and not "racial" even though persons had to have "one fourth or more degree Indian blood" to qualify for preference. 417 U.S. at 553 n.24, quoting from 44 BIAM 335, 3:1. Although this racial criteria was *necessary*, it was not *sufficient*, because persons *also* had to be members of Federally-recognized tribes to qualify. *Id*. See also *Alaska Chapter, Associated Gen. Contractors of*

Morton v. Mancari, supra. *See*, e.g., *United States v. John*, 437 ~~*America v. Pierce*, 694 F.2d 1162, 1168 n.10 (9th Cir. 1982).~~ U.S. 634 (1978); *Simmons v. Eagle Seelatsee*, 244 F.Supp. 808, 814 (E.D. Wash., 1965), *aff'd mem.*, 384 U.S. 209 (1966); *United States v. Celestine*, 215 U.S. 278, 290 (1909); *Montoya v. United States*, 180 U.S. 261, 266 (1901); *Felix v. Patrick*, 145 U.S. 317, 330 (1892); *United States v. Rogers*, 45 U.S. (4 How.) 567, 573 (1846).

The legitimacy and importance of the political-racial distinction becomes clear, however, when one realizes that the United States does not grant any special privileges to or have a trust relationship with Canadian, Mexican, or Guatemalan Indians residing in the United States, even though they are members of the same "race" as American Indians. See Johnson and Crystal, *Indians and Equal Protection*, 54 Washington L. Rev. 587, 598 n.80 (1979). Similarly, the preference involved in the Office of Hawaiian Affairs does not extend to native Hawaiians not residing in Hawaii nor does it apply to other Polynesians in Hawaii (Tongans, Samoans, etc.), who are members of the same "race" as Hawaiians but who do not fit the "political" classification of being descendants of persons who resided here prior to 1778. See generally J. Jennings (ed.), *The Prehistory of Polynesia* 6, 167 (1979).

The preferences granted to persons native to areas that now constitute the United States are therefore, *political* in the sense that they arise out of a specific set of political and historical relationships and are not an attempt to elevate one race over another solely for racial reasons. Indeed the U.S. Supreme Court included a footnote in its opinion in *University of California Regents v. Bakke*, 438 U.S. 265 (1978), specifically exempting native groups from the analysis of that opinion. [4]

The 1982 Edition of Felix S. Cohen's *Handbook of Federal Indian Law*--which is the most definitive sourcebook on this subject--explains this situation by saying that "the Court's reliance on a political-racial distinction may be no more than *an imprecise reference to the special status of Indian tribes under the Constitution and the laws*." *Id*. at 656 (emphasis added). See also Johnson and Crystal, *supra*, 54 Washington L.Rev. at 594-607.

Supreme Court and U.S. appeals court decisions since

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[4] 438 U.S. at 304 n.42:

> "Petitioner also cites our decision in *Morton v. Mancari*, 417 U.S. 535 (1974), for the proposition that the State may prefer members of traditionally disadvantaged groups. In *Mancari*, we approved a hiring preference for qualified Indians in the Bureau of Indian Affairs of the Indians in the Bureau of Indian Affairs of the Department of the Interior (BIA). We observed in that case, however, that the legal status of the BIA is *sui generis*. *Id*., at 554. Indeed, we found that the preference was *not racial at all* but 'an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent . . . groups. . . whose lives and activities are governed by the BIA in a unique fashion' *Ibid*."

(Emphasis added).

Morton have been consistent in upholding other preferences for native groups. These cases are summarized here because they are direct precedents for the constitutionality of the Office of Hawaiian Affairs:

1. Antoine v. Washington, 420 U.S. 194 (1975). This decision reversed a ruling of the Washington Supreme Court that had upheld the conviction of an Indian for violating a state hunting statute. The U.S. Supreme Court reaffirmed a federal agreement guaranteeing Indian hunting rights and the legitimacy of governmental preferences for Indians in general. In an opinion written by Justice Brennan, the Supreme Court also reaffirmed the "canon of construction applied over a century and a half by this Court. . . that the wording of treaties and statutes ratifying agreements with the Indians is not to be construed to their prejudice." Id. at 199.

2. Fisher v. District County Court, 424 U.S. 382 (1976). The Court upheld the legitimacy of the separate status of natives in ruling (per curium) that Montana state courts have no jurisdiction over adoption proceedings involving tribal members living on the reservation:

> "[W]e reject the argument that denying respondents access to the Montana courts constitutes impermissible racial discrimination. The exclusive jurisdiction of the tribal court does not derive from the race of the The plaintiff but rather from the quasi-sovereign status of the Northern Cheyenne Tribe under Federal Law."

Id. at 390.

3. Moe v. Confederated Salish and Kootanai Tribes of

Flathead Indian Reservation, 425 U.S. 463 (1976). The Court rejected Arizona's argument that an immunity from state taxes granted to the Indians by the federal government constituted "an invidious discrimination against non-Indians on the basis of race. . ." Id. at 479. The Supreme Court's opinion, written by Justice Rehnquist, said that "[w]e need not dwell at length on this constitutional argument," because "we think it is foreclosed by our recent decision in Morton v. Mancari, 417 U.S. 535 (1974)." Id. at 479-80.

4. Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977). In this decision, written by Justice Brennan, the Court upheld a distribution of property to certain Indians that excluded other Indians, concluding that

> "Congress may choose to differentiate among groups of Indians in the same tribe in making a distribution. . . . The standard of review most recently expressed is that the legislative judgments should not be disturbed '[a]s long as the special treatment can be tied rationally to the fulfillment of Congress 'unique obligation toward the Indians. .' Morton v. Mancari, supra, at 555."

Id. at 84-85.

5. United States v. Antelope, 430 U.S. 641 (1977). In an opinion written by Chief Justice Burger, the Court rejected defendant's argument that the separate criminal jurisdiction that applies only to Indians (and which was harsher on this Indian defendant than the state laws would have been) constitutes invidious racial discrimination:

"The decisions of this Court leave no doubt that

> federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classifications. Quite the contrary, *classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Goverment's relations with Indians*."

Id. at 645 (emphasis added; footnote omitted).

> ". . . federal regulation of Indian affairs is not based upon impermissible classifications. Rather, *such regulation is rooted in the unique status of Indians as 'a separate people' with their own political institutions*. Federal regulation of tribes, therefore, is governance of once-sovereign political communities; *it is not to be viewed as legislation of a '"racial" group consisting of "Indians"*. . .'"

Id. at 646 (citing *Morton v. Mancari*, *supra*; emphasis added).

6. *Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463 (1979). The Indian tribes challenged a State of Washington statute that retained jurisdiction over eight subjects while transfering civil and criminals jurisdiction over all other subjects to the tribes (unless a tribe petitioned the state to retain all jurisdiction). The Supreme Court rejected the challenge, 7-2, holding that the State's action was authorized by a 1953 act of Congress (Pub.L. 280) and that it met the "rationality" review appropriate for constitutional review of statutes affecting Indians. In the course of his opinion for the majority, Justice Stewart said:

> "It is settled that 'the unique legal status of Indian tribes under federal law' permits the Federal government to enact legislation that might otherwise be constitutionally offensive."

439 U.S. at 500-01 (citing *Morton v. Mancari*, *supra*, 417 U.S. at

551-52). Justices Marshall and Brennan dissented on the grounds that the 1953 Congressional statute was ambiguous, and that the statute should be construed in favor of the Indians.

7. Wilson v. Omaha Indian Tribe, 442 U.S. 653 (1979). The Supreme Court interpreted and held applicable to a boundary controversy a venerable statute (25 U.S.C. sec. 194) that granted a preference to Indians in the following terms:

> In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession in ownership.

The U.S. Court of Appeals for the Eighth Circuit had summarily rejected a constitutional challenge to this preference when it considered this case (575 F.2d 620, 631 n.18), and the challenge apparently was not even raised at the Supreme Court level. In an opinion written by Justice White, the Supreme Court did reaffirm the canon of construction that "statutes passed for the benefit of dependent Indian tribes. . . are to be liberally construed, doubtful expressions being resolved in favor of Indians." 442 U.S. at 666 (quoting Bryan v. Itasca County, 426 U.S. 373, 392 (1976), and Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918). See Note, Supreme Court Upholds the Validity of Preferential Treatment of Indians in Land Dispute, 13 Creighton L. Rev. 619 (1979).

8. Washington v. Washington State Commerical Fishing Vessel Assn., 443 U.S. 658 (1979). The Supreme Court upheld

treaties granting fishing rights to the Indians and interpreted these rights in the Indians` favor. In the process of reaching these conclusions the Court reversed a ruling of the Washington State Supreme Court "that recognizing special rights for the Indians would violate the Equal Protection Clause of the Fourteenth Amendment." Id. at 672. The Supreme Court`s opinion, written by Justice Stevens, summarily rejected the state court`s conclusion in a footnote stating:

> "The simplest answer to this argument is that this Court. . . has repeatedly held that the peculiar semisovereign and constitutionality recognized status of Indians justifies special treatment on their behalves when rationally related to the Government`s `unique obligation toward the Indians.` Morton v. Mancari, 417 U.S. 535, 555. See United States v. Antelope, 430 U.S. 641; Antoine v. Washington, 430 U.S. 641. . ."

Id. at 673 n. 20.

These decisions were all unanimous on the issue of importance to the present litigation--that special treatment for native groups is permitted as long as the special program is rationally related to the government`s "unique obligation" to these native groups. See generally Clinton, Isolated in Their Own Country: A Defense of Federal Protection of Indian Autonomy and Self-Government, 33 Stanford L.Rev. 979, 1009-18 (1981).

B. FEDERAL DECISIONS ALSO RECOGNIZE THE LEGITIMACY OF STATE PROGRAMS GRANTING PREFERENCE TO NATIVE GROUPS

Hawaii's creation of the Office of Hawaiian Affairs fulfills in part the obligation Hawaii accepted from the federal government at the time of statehood (see Section II, _supra_) and hence this action has the same constitutional legitimacy as if OHA had been created directly by the federal government. Even if this lineage could not be shown, however, it would be appropriate and constitutional for a state acting on its own to grant a preference to its native groups for the purpose of maintaining and developing the native culture.

The leading recent case recognizing this principle is _Livingston v. Ewing_, 601 F.2d 1110 (10th Cir. 1979), _affirming_ 455 F.Supp. 825 (D.N.M. 1978). A Caucasian couple challenged a regulation of the State Museum of New Mexico that permitted only Pueblo Indians to sell craft items at the portal outside the state-owned Palace of the Governors, adjacent to Santa Fe's tourist-filled plaza. The Caucasian couple, represented by the American Civil Liberties Union, argued that the decision to use state property for the benefit only of the Indians constituted "an unjustified classification based on race" in violation of the Equal Protection Clause of the Fourteenth Amendment. 455 F.Supp. at 827.

The District Court rejected this argument, concluding that the preference met the test in _Morton v. Mancari_ that it be "reasonably and directly related to a legitimate nonracially based goal." 455 F.Supp. at 832, citing 417 U.S. at 554. The District Court stated that the museum's Indian-only policy endeavored to promote the "very legitimate, racially neutral state interest" (455 F.Supp. at 832) of preserving the Pueblo culture and tradition, aiding the economic survival of the Indian merchants, protecting them from "forced assimilation" (id at 831), and promoting tourism as well. The District Court explained the status of Indians as follows:

> "Because of their unique cultural, legal, and political status, Indians have consistently received special or preferential treatment, from the federal and state governments. . .
>
> " . . .This list of special laws, and cases giving preferential treatment to Indians is consierable, and the justification for all this lies in the appreciation of the uniqueness of Indian communities, their wish to maintain a separate way of life, and the benefit that the preservation of such will confer upon society."

Id. at 830 (emphasis added).

The U.S. Court of Appeals for the Tenth Circuit affirmed the decision, viewing it as governed by Morton v. Mancari and the statute involved in Morton, 42 U.S.C. sec. 2000e-2(i). The Court also said that strong reasons exist for providing a separate place for the Pueblos: "a valuable state interest, that of acquiring, preserving, and exhibiting historical, archeological, and ethnological interest in fine arts." 601 F.2d at 1115. The court ruled that the rights claimed by the white complainants were "far outweighed by the educational, cultural, and artistic interests which the state is fostering." Id.

This case thus clearly recognizes the legitimacy of state action taken to preserve and promote the cultural integrity of its native groups. Other cases that recognize the power of states to protect natives include New York ex rel Cutler v. Dibble, 62 U.S. (21 How.) 366 (1859) (state statute that protects Indian lands against white intruders is upheld); Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 672 n.7 (1974) (note mentions Dibble holding (dicta)); State v. Forge, 262 N.W.2d 341 (Minn. 1977), appeal dismissed, 435 U.S. 919 (1978) (state statute requiring special fishing license fee for anyone not a member of the Minnesota Chippewa Tribe to fish on the Leech Lake Indian Reservation is upheld).

C. MANY STATES HAVE ESTABLISHED SPECIAL PROGRAMS FOR THEIR NATIVE GROUPS

Other evidence of the legitimacy of such steps can be found in the many state statutes and constitutional provisions establishing state agencies comparable to OHA designed to assist native groups in their separate cultural development:

Alabama: Southeast Alabama Indian Affairs Commission--composed of Creek Indian leaders living in Alabama; designed to assist Indians and promote recognition of their right to pursue cultural and religious traditions. Code of Alabama, sec. 41-9-700 et seq. (1975).

Alaska: Alaska has a number of statutory provisions specifically designed for its native populations, including a provision creating the Alaska Native Language Center (Alaska Statutes, sec. 14.40.117 (1983)), provisions protecting native handicrafts (id., sec. 45:65 020 et seq.), and provisions creating regional native housing authorities. *Id.*, sec. 18.55.995 *et seq*.

Arizona Commission of Indian Affairs--composed of four *ex officio* members, two non-Indians, and seven Indians; designed to study Indians conditions and make recommendations. Ariz. Rev. Statutes, sec. 41-541 *et seq*. (1974).

California: Native American Heritage Commission--composed of nine members, at least five of whom must be "elders, traditional people, or spiritual leaders of California Native American tribes;" designed to identify and protect places sacred to California's native American groups. Calif. Public Resources Code, sec. 5097.91 *et seq*. (1983); California's Department of Education also has a Bureau of Indian Education whose mission is to "study and identify the cultural and educational disadvantages affecting American Indian children in the present existing public school system." Calif. Educ. Code, sec. 33370 (1978).

Colorado: Commission of Indian Affairs--composed of five *ex officio* members, four representatives of the Ute tribes, and two at-large members; designed to study and serve the Indian communities; established in recognition of "the special governmental relationships and unique political status of these tribes. . ." Colo. Rev. Statutes, sec. 24-44-01 *et seq*. (1981 cum.supp.).

Louisiana: Governor's Commission on Indian Affairs--composed of nine Indian members; designed to coordinate state services for Indians and to administer the Indian Education Assistance Fund. La. Rev, Statutes, sec. 2301 et seq. (1982). Louisiana Indian Housing Authority--composed of nine persons "of Indian descent or heritage;" empowered to use state's fiscal powers to develop housing for the state's Indian population. Id. sec. 40:581.1 et seq. (1982).

Maine: Maine Indian Tribal-State Commission--composed of four gubernatorial appointees and four Indians selected by the Passamaquoddy Tribe and Penobscot Nation with a chair selected from among the retired judiciary by these eight; designed to review the social, economic and legal relationships between the tribes and the state. Maine Rev. Statutes, sec. 6212 (1982-83).

Maryland: Commission on Indian Affairs--composed of nine members "a majority of whom shall be members of the native American Indian communities" of the state; designed to study the status and economic and social needs of the Indians and make recommendations to improve their situation. Ann. Code of Md., sec. 409-I et seq. (1982).

Michigan: Commission on Indian Affairs--composed of 11 members, nine of whom "shall have not less than 1/4 quantum Indian blood;" designed to assist Indian organizations with regard to rights or services due to them. Mich. Compiled Laws, sec. 16.711 et seq. (1979).

Minnesota: Indian Affairs Board--composed of 16 ex officio members and 13 Indian members including two elected by Indian residents of the state; designed to assist state and local governments in serving the Indian communities. Minn. Statutes, sec. 3.922 et seq. (1983).

Montana: State Coordinator of Indian Affairs--a state official in the state Department of Commerce who serves as an advocate and coordinator for Indian needs within the state government. Mont. Code, sec 90-11-101 et seq. (1983).

Nebraska: Commission on Indian Affairs--composed of 15 members from the different tribes in Nebraska; designed to provide a forum to discuss problems common to all Indians and to work with governmental entities to coordinate Indian needs. Nebraska Rev. Statutes, sec. 81-1214 et seq. (1981).

Nevada: Nevada Indian Commission--composed of five members, three of whom are Indians, with a paid executive director and staff; designed to make recommendations to assist Nevada Indians. Nev. Rev. Statutes, sec. 233A.010 et seq. (1977).

New Mexico: New Mexico Office of Indian Affairs. N.M. Statutes, sec. 28-12-4 et seq. (1978).

North Carolina: North Carolina State Commission of Indian Affairs--designed to assist Indians and promote recognition of the rights of Indians to pursue their cultural and religious traditions. N.C. General Statutes, sec. 143B-404 et seq. (1983)

North Dakota: North Dakota Indian Affairs Commission--

composed of eight _ex officio_ and 11 Indian members; designed to assist the four tribal councils to develop their economic potential. N.D. Century Code, sec. 54-36-01 _et seq_. (1982).

Oklahoma: Oklahoma Indian Affairs Commission--composed of nine members appointed by the Governor who represent the geographic areas of the state and the various tribes in the state, plus a Director who must be at least one-fourth Indian; designed to promote unity, purpose and understanding among the Indians of Oklahoma. Okla. Statutes, sec. 74-1201 _et seq_. (1976).

Oregon: Commission on Indian Services--composed of two legislators and eight Indians; designed to develop programs for Indians and promote legislation for their benefit. Oregon Rev. Statutes, sec. 172.100 _et seq_. (1981).

Rhode Island: Narragansett Indian Land Management Corporation--designed to receive the settlement lands designated in a 1978 law suit won by the Indians for lands previously lost. Gen. Laws of R.I., sec. 37-18-1 _et seq_. 1982).

South Dakota: State Commission of Indian Affairs--composed of eight _ex officio_ members, four legislators, and 12 Indians; designed "to help solve Indian problems and to serve as an advocate of the Indian people." Also has a State Indian Business Development Organization to promote Indian business development. S.D. Codified Laws, sec. 1-4-1 _et seq_. (1980).

Tennessee: Commission of Indian Affairs--composed of two non Indians and three Indians; designed to assist Indians and promote recognition of Indian rights to pursue their cultural and religious traditions. Tenn. Code, sec. 4-34-101 et seq. (1983).

Utah: Board of Indian Affairs--composed of seven members appointed by the governor, including at least one Navaho and one Ute, with a Division of Indian Affairs to promote Indian advancement. Utah Code, sec. 63-36-1 et seq. (1981).

Virginia: Commission on Indians--composed of ten members, at least half of whom must be Indians; designed to suggest ways of promoting Indian development. Code of Va., sec. 9-138.1 et seq. (1983).

This long list of state statutes demonstrates the strong national commitment to the special status of native groups. Many of these state organizations are advisory in nature, because the federal government has the primary responsibility toward Indians, working through the Bureau of Indian Affairs. See generally D. Getches, D. Rosenfelt, C. Wilkinson, Federal Indian Law 120-42 (1979). Because in Hawaii the federal responsibility was largely passed to the state at the time of statehood, Hawaii's native organization, the Office of Hawaiian Affairs, has both advisory and program-oriented responsibilities, combining the roles of the Bureau of Indian Affairs and the state advisory commissions.

D. NATIVE HAWAIIANS ARE CLEARLY COVERED BY THE FEDERAL DECISIONS ON THE CONSTITUTIONALITY OF SPECIAL PROGRAMS FOR NATIVE AMERICANS.

The inclusion of native Hawaiians in the category of native Americans who are granted a special political status under our constitutional scheme is clearly supported by (1) the decisions of the Hawaii Supreme Court, (2) the many acts of the U.S. Congress granting a special status to native Hawaiians, and (3) the language and logic of the many federal court decisions that recognize and define the special political status for native Americans.

1. *The Hawaii Supreme Court Has Recognized that Native Hawaiians Are Native Americans*.

As discussed in section III. B, *supra*, the Hawaii Supreme Court in *Ahuna v. Dept. of Hawaiian Home Lands*, *supra*, 64 Hawaii at 339, recognized as questions involving native Hawaiians should be analyzed in the same manner as questions involving other native Americans:

> In our opinion, the extent or nature of the trust obligations of the appellant [Department of Hawaiian Home Lands] toward beneficiaries such as the appellee may be determined by examining well-settled principles enunciated by the federal courts regarding lands set aside by Congress in trust for the benefit of other native Americans, *i.e.*, American Indians, Eskimos, and Alaska natives. In *Pence v. Kleppe*, 529 F.2d 135 (9th Cir. 1976), the circuit court recognized that the word "Indian" is commonly used in the United States to mean "the aborigines of America." *Id*. at 138-39 n.5; *see also* 42 C.J.S. *Indians* Sec. 1 (1944). Congress recently passed a religious freedom act which specifically included native Hawaiians among the American Indians. *See* American Indian Religious Freedom Act, Pub.L. No. 95-341, 92 Stat. 469 (1978) (codified at 42 U.S.C. Sec. 1996 (Supp. III 1979). *Essentially we are dealing with relationships between the government and aboriginal people. Reason thus dictates that we draw the analogy between native Hawaiian homesteaders and other native*

Americans.

(Emphasis added.)

2. *The U.S. Congress Has Repeatedly Recognized the Special Status of Native Hawaiians and Has Included Native Hawaiians in Many Programs for Other Native Americans*.

Among the Congressional statutes singling out native Hawaiians for special treatment and preferences are the previously discussed Hawaiian Homes Commission Act, 1920, Section III. B, *supra*, and the 1959 Admissions Act, Section II, *supra*. After questions were raised in 1920 about the constitutionality of the Hawaiian Homes program, the federal solicitor of the Department of the Interior submitted an opinion arguing strongly in favor of its constitutionality. The opinion refers to Congressional enactments that set aside lands for Indians (26 Stat. 794) as precedents. H.Doi, *Legal Aspects of the Hawaiian Homes Program* 43 (Legislative Reference Bureau Rpt. 1a, 1964), citing *Hearings on Rehabilitation and Colonization of Hawaiians and Other Proposed Amendments to the Organic Act of the Territory of Hawaii and on the Proposed Transfer of the Buildings on the Federal Leprosy Investigation Station at Kalawao on the Island of Molokai Before the House Committee on Territories*, 66th Cong., 2d Sess., 130-31 (1920).

The House Committee on Territories agreed with this conclusion, and stated that the legislation was based on "a reasonable and not an arbitrary classification" with "numerous congressional precedents for such legislation in previous enactments granting Indians [and other groups] special privileges in obtaining and using the public lands." Report No. 839 on Rehabilitation of Native Hawaiians of the House Committee on Territories to Accompany H.R. 13500, 66th Cong., 2d Sess. (1920).

In recent years, Congress has enacted additional statutes for the specific benefit of native Hawaiians. In 1980, Congress passed three statutes all identifying native Hawaiians as subjects of special federal attention:

a. Native Hawaiian Education Study, Pub.L. 96-374, Title XIII, sec. 1331, 94 Stat. 1499, 20 U.S.C. sec. 1221-1, which states that "Congress declares its commitment to assist in providing the educational services and opportunities which Native Hawaiians need" and then establishes a seven-member Advisory Council to make recommendations to the Secretary of Education about how the Department of Education can better serve Native Hawaiians.

b. Kalaupapa National Historical Park, Pub.L. 96-565, Title I, 94 Stat. 3321, 16 U.S.C. sec. 410 jj, which establishes a national park at Kalaupapa on Molokai and provides an employment preference and training opportunities for Native Hawaiians (as well as qualified patients) for "positions established for the administration of the park." Sec. 107, 16 U.S.C. sec. 410 jj-6. The statute also establishes the Kalaupapa National Historical Park Advisory Commission of eleven members;

seven must be patients or former patients elected by the patient community and four are "appointed from recommendations submitted by the Governor of Hawaii, at least one of whom shall be a Native Hawaiian." Sec. 108(a), 16 U.S.C. sec. 410 jj-7(a) (emphasis added).

c. Native Hawaiians Study Commission Act, Pub.L. 96-565, Title III, 94 Stat. 3324, 42 U.S.C. sec. 2991a, which establishes a nine-member commission to "conduct a study of the culture, needs and concerns of the Native Hawaiians" and prepare a report on this subject. Sec. 303. As used in this statute, "the term `Native Hawaiian` means any individual whose ancestors were natives of the area which consisted of the Hawaiian Islands prior to 1778."

One recent federal action taken at the administrative level recognizing the continuing federal responsibility for native Hawaiians should also be mentioned. On January 21, 1983, U.S. Secretary of the Interior James G. Watt established the Federal-State Task Force on the Hawaiian Homes Commission Act, which prepared a report released in August 1983 "on ways to better effectuate the purposes of the Hawaiian Homes Commission Act." Three members of this Task Force were appointed by the Secretary of the Interior, and seven were appointed by the Governor of Hawaii; funding and staffing were similarly shared.

In addition to these statutes and administrative actions recognizing the special political status of native Hawaiians, Congress has specifically included native Hawaiians in a number of its recent enactments designed to benefit native Americans generally:

a. Native American Programs Act of 1974, Pub.L. 93-644, Title VIII, 88 Stat. 2324, 42 U.S.C. Sec. 2991, which is designed to "to promote the goal of economic and social self-sufficiency for American Indians, Hawaiian Natives and Alaskan Natives" by providing financial assistance to public and nonprofit agencies serving the native groups. Secs. 802-03, 42 U.S.C. 2991a-b. As used in this statute, "'Native Hawaiian' means any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778." Sec. 813(3), 42 U.S.C. sec. 2992c(3). This program has provided funding for Alu Like, a non-profit organization designed to promote the economic development of native Hawaiians.

b. American Indian Religious Freedom, Pub.L. 95-341, 92 Stat. 469 (1978), 42 U.S.C. sec. 1996, which states that:

> it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

The President is directed to implement this policy by working with the various federal departments. It can be noted that in this statute, the first time the words "American Indians" are used, they are used in the broad sense of applying to all native

Americans.

c. *Native American Employment and Training Programs* in the *Comprehensive Employment and Training Act Amendments of 1978*, Pub.L. 95-524 sec. 302, 92 Stat. 1909, 1962, 29 U.S.C. sec. 872, in which Congress finds that "serious unemployment and economic disadvantage exist among members of . . . Hawaiian native communities" and instructs the Secretary of Labor to "arrange for programs to meet the employment and training needs of Hawaiian natives through such public agencies or private nonprofit organizations as the Secretary determines will best meet their needs."

d. *Drug Abuse Prevention and Treatment*, Pub.L. 98-24, sec. 5(a)(3), 97 Stat. 183 (1983), 21 U.S.C. sec. 1177, which states that "Native Americans (including Native Hawaiians and Native American Pacific Islanders)" are to be given "special consideration" (along with other target groups) by the federal government for funding of programs to prevent, treat, and rehabilitate drug abuses.

e. *Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act*, Pub.L. 98-24, sec. 5(a)(2), 97 Stat. 183 (1983), 42 U.S.C. sec. 4577, which states that the National Commission on Alcoholism and Other Alcohol-Related Problems should evaluate "the needs of special and underserved population groups, including American Indians, Alaskan Natives, Native Hawaiians, Native American Pacific Islanders. . ." and that "Native Americans (including Native

Hawaiians and Native American Pacific Islanders)" are to be given "special consideration" (along with other target groups) by the federal government for funding of programs to prevent, treat, and rehabilitate alcohol abusers.

3. Federal Courts Have Consistently Recognized that the Special Political Status Accorded to Native Americans Applies to All Native Groups

Although the different native groups in the United States have different traditions and needs which have led Congress to provide different programs for them, the courts have recognized that the capacity of Congress to grant preferences for these different groups is the same under our constitutional scheme. In several cases, the federal courts have interpreted statutes broadly to include additional native groups, assuming that (unless otherwise stated) Congress intended to treat all native groups similarly situated in a similar manner. See, *e.g.*, *Pence v. Kleppe*, 529 F.2d 135, 139 n.5, *United States v. Native Village of Unalakleet*, 411 F.2d 1255 (Ct. Claims 1969); *Alaska v. Annette Island Packing Co.*, 289 F. 671 (9th Cir. 1923); *Alaska Pacific Fisheries v. United States*, 248 U.S. 78 (1918), *aff'g* 240 F.274 (9th Cir. 1917).

The cases just cited that extended rights granted to Indians in the 48 states to Alaskan native groups are strong precedents that these or comparable rights can also be extended to native Hawaiians because the Alaskan natives differ significantly from natives in the "lower 48" -- and from each other:

> "Alaskan Natives have not historically been organized into reservations or into tribal units. . . Alaskan Natives, unlike other American Indians, never entered into treaties with the United States designating reservation lands which Natives were entitled to occupy. . lands which Natives were entitled to occupy. . . ."

Alaska Chapter, Associated Gen. Contractors of America v. Pierce, 694 F.2d 1162, 1169 n.10 (9th Cir. 1982).

Although native Hawaiians differ culturally from mainland natives, their historical relationships with the United States have been similar in many respects. (See historical summary, Appendix A.) U.S. officials have used language describing native Hawaiians that is similar to the language used to describe other native groups, referring to the native Hawaiians as "wards. .. for whom in a sense we are trutees." Statement of ex-Secretary of the Interior Franklin K. Lane in 1920, quoted in *Ahuna*, *supra*, 64 Hawaii at 336; compare to *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831) (the relation of the Indians "to the United States resembles that of a ward to his guardian"). See also the analogy drawn by the solicitor to the Department of the Interior comparing Hawaiians and Indians, discussed in section IV. D.2, *supra*. To rule that the legislature could not provide native Hawaiians with a special political status similar to that given other native groups would therefore, raise serious equal protection questions. See, *e.g.*, *United States v. Native Village of Unalakleet*, *supra*, 411 F.2d at 1260-61; Levy, *Native Hawaiian*

Land Rights, 63 Calif. L.Rev. 848, 875 (1975).

E. THE OFFICE OF HAWAIIAN AFFAIRS MEETS THE REQUIREMENT THAT SPECIAL PROGRAMS FOR NATIVES "BE TIED RATIONALLY TO THE FULFILLMENT" OF THE GOVERNMENT'S UNIQUE OBLIGATONS TOWARD NATIVE HAWAIIANS.

The U.S. Supreme Court ruled in Morton v. Mancari, 417 U.S. 535, 555 (1974), that special programs for native groups would satisfy constitutional requirements if they were "tied rationally to the fulfillment" of the government's unique obligation to the native population. This rationality test requires a reviewing count to examine the goals of a special program and the means devised to achieve the goals, and then to uphold the program if it appears to be a logical approach toward assisting the native population.

The Office of Hawaiian Affairs clearly meets this test. OHA was created to carry forth the government's obligation toward the native Hawaiians, which has been repeatedly recognized by the federal government (see Section IV. D.2, *supra*) and was transferred to and accepted by the state government at the time of statehood. See Section II, *supra*.

OHA is designed to enable native Hawaiians to have a forum within which they can discuss their community problems and devise agreed-upon solutions for them. It is designed to serve as an entity for holding title to land and other property in trust for the Hawaiian community. It is empowered to collect revenues from trust lands and to develop and fund programs to improve the conditions of persons of Hawaiian ancestry. See Section II, supra, and the Hawaii Constitution, Art. XII, secs. 5-6; HRS secs. 10-1 to 10-16. In short, the Office of Hawaiian Affairs is designed to respond directly to the problems that the Hawaiian community have faced and to begin the process of solving these problems. The creation of OHA by the voters and legislature of Hawaii is clearly "tied rationally to the fulfillment" of the government's unique obligation toward the Hawaiian community.

V. INTERNATIONAL LAW ALSO RECOGNIZES THAT SPECIAL PROTECTIONS SHOULD BE GIVEN TO NATIVE GROUPS

The United States Supreme Court has recognized that "[i]nternational law is part of our law." The Paquete Habana, 175 U.S. 677, 700 (1900). U.S. courts are bound by treaties made "under the Authority of the United States" (U.S. Constitution, Art. VI), and they traditionally try to interpret U.S. statutes to conform to international customary law, assuming that the U.S. Congress intends its legislation to conform to principles of international comity. See, e.g., The Over the Top, 5 F.2d 838, 842 (1925).

The International Covenant on Civil and Political Rights, adopted unanimously by the United Nations General Assembly in 1966, now ratified by over 50 nations, and signed (but not yet ratified)[5] by the United States says in Article 27 that all minority ethnic groups have the right to preserve their cultures:

> In those States in which ethnic, religious or linguistic minorities exist, *persons belonging to such minorities shall not be derived the right, in community with other members of their group, to enjoy their own culture*, to profess and practice their own religion, or to use their own language.

(Emphasis added).

Other international conventions and declarations provide more specific protections for native groups. Convention 107 of the International Labor Organization: Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, 328 U.N.T.S. 247 (1959), for instance, protects the cultural and political autonomy of native peoples, urging nations to adopt special measures to preserve native institutions, including the protection of traditional land ownership patterns, methods of social control, and customary law. *Id.* arts. 8, 11-13. This Convention has been ratified by 21 nations including 11 in Latin America. Although the United States has not ratified this convention, it can be seen as providing the framework of customary international law that is binding on all nations. See generally, Clinton, *Isolated in Their Own Country: A Defense of Federal Protection of Indian Autonomy and Self-Government*, 39 Stanford L.Rev. 979,

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[5] By signing this treaty, the United States becomes "obliged to refrain from acts which would defeat the object and purpose of [the] treaty. . ." Vienna Convention on the Law Treaties (1969), art. 18 (U.N. Doc. A/CONF. 39/27).

1054-57 (1981); G. Bennett, *Aboriginal Rights in International Laws* 16-48 (1978).

The United Nations has continued to work in a number of ways to increase the protection accorded to native groups. See Clinton, *supra*, at 1059-60; Bennett, *supra*, at 49-60. In addition, the Inter-American Commission on Human Rights (a body the United States is represented on) has stated that "special protection for indigenous populations constitutes a sacred commitment" of all members of the Organization of American States. Bennett, *supra*, at 61. The principles developed by the international community in recent years thus state without contradiction that it is appropriate to protect the cultures of all minority groups and in particular to provide protections and special programs for native people.

VI. SOUND POLICY REASONS SUPPORT PROVIDING SPECIAL PROTECTION AND PREFERENCES FOR NATIVE GROUPS

Concerns persist about recognizing the special status of native groups because such recognition appears to be inconsistent with our usual constitutional principle that we should treat and evaluate each person as an individual, rather than grant or deny benefits based solely on a person's race or ethnic origin. Our Constitution, however, also recognizes the special status of native groups (Article I, sec. 8, cl. 3 and 14th Amendment, sec. 2) and recognizes the rights of these groups just as it also recognizes the importance of individual rights in other contexts.

Native groups have been given a special status in our constitutional scheme because the people in these groups have had a distinct historical relationship with the United States and because these people have specific political claims against the United States government. These themes have appeared throughout the cases discussed in the earlier sections, but it may be useful to summarize the policy considerations at this point.

Three policy reasons help explain why native peoples are given a strong preference in our legal system:

First, all ethnic groups except for native peoples agreed at some level or other to participate in the multi-ethnic society that we have in the United States. Every other immigrant group came to the United States understanding that this new country consisted of a multi-ethnic community and implicitly agreeing to participate in such a culture.[6] The native peoples made no such commitment, they were never asked if they wanted to participate in our melting pot, and they have never specifically agreed to do so. Native peoples were largely conquered by other ethnic groups and have generally been excluded from many of their original land areas. The legislature and courts have felt that in view of this history native peoples should be given some special status under our legal system.

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[6] This rationale does not, of course, include blacks who were forcefully brought to North America and kept as slaves during the early years of our country's history. The second policy reason does distinguish blacks from native Americans.

Second, and equally important, native peoples have no "mother culture" elsewhere to tie themselves to. Every other ethnic group in the United States can look to some other location where their historical and cultural traditions are maintained. They face, therefore, no total loss of their historical roots if they become assimilated into the dominant multi-ethnic culture. On the other hand, native peoples have no place to look for this protection of their culture and heritage, except their place of origin in the United States. If they are not permitted to maintain some unique and special status here, their culture and traditions will be lost forever. In that sense, therefore, native peoples are something like an endangered species deserving of special protection.

Finally, native peoples frequently have strong claims to reparations and land, based on treaties and other early dealings with the United States government. Preferences granted to native Americans are, therefore, sometimes viewed as partial responses based on obligations owed to these peoples.

These policies and legislative and judicial actions amply support the decision of the people and legislature of Hawaii to create the Office of Hawaiian Affairs to maintain the historical and cultural traditions of the Hawaiian people and promote their economic prosperity.

VII. IF AN ADDITIONAL ARGUMENT IS NEEDED THE CONSTITUTIONALITY OF THE OFFICE OF HAWAIIAN AFFAIRS CAN BE JUSTIFIED AS A LEGISLATIVELY - ESTABLISHED AFFIRMATIVE ACTION PROGRAM

The United States Supreme Court has held in Fullilove v. Klutznick, 448 U.S. 448 (1980), that legislative bodies can use racial and ethnic criteria in fashioning a "narrowly tailored" program "to accomplish the objective of remedying the present effects of past discrimination" 448 U.S. at 480 (opinion of Chief Justice Burger). Although the Court did not join in a single majority opinion, six of the nine justices agreed that Congress had acted constitutionally when it enacted a statute that required that 10 percent of the funds authorized for local public works projects be used to procure services or supplies from businesses owned by minority group members. Because this affirmative action program was enacted by legislative body, the Fullilove program was distinguished by the Court from the admissions program struck down in University of California Regents v. Bakke, 438 U.S. 265 (1978), where there had been "no determination by the legislature or a responsible administrative agency that the University engaged in a discriminatory practice requiring remedial efforts." Id. at 305 (opinion of Justice Powell).

The legislative action that established the Office of Hawaiian Affairs took place at the 1978, Constitutional Convention and on November 7, 1978, when the voters of Hawaii approved the proposed amendments. The discussions and deliberations at the Constitutional Convention demonstrate that OHA was established to help redress the effects of two centuries of discrimination against the native Hawaiians. "Frenchie" De Soto, Chair of the Committee on Hawaiian Affairs, introduced the provision on OHA to the Committee of the Whole, saying:

> "The goal of the Office of Hawaiian Affairs is to address the modern-day problems of Hawaiians which are rooted in as dark and sad a history as will ever mark the annals of time."

Committee of the Whole Debates (Sept. 2, 1978), 1 Proceedings of the Constitutional Convention of 1978 at 457 (emphasis added). After this session, the Committee of the Whole approved the proposal to create OHA, justifying the decision along the following lines:

> "The present Hawaiian population is a young one. . . The Hawaiian people today should be given the opportunity to provide for the betterment of the conditions and well-being of these young Hawaiians and to address the contemporary problems that Hawaiians face--crime, inadequate housing conditions, welfare rolls and education. This proposal gives Hawaiians, a great and proud people, the opportunity and the means to do so. Your Committee feels that it is time the Hawaiians have more impact on their future."

1 Proceedings of the Constitutional Convention of Hawaii of 1978 at 1018 (emphasis added).

The Hawaii State Legislature also recognized this remedial purpose for OHA when it implemented the constitutional provision in 1979 and stated directly that the primary purpose of OHA is "The betterment of conditions of native Hawaiians [and]

Hawaiians". H.R.S. sec. 103(1)-(2).

This legislative authorization for an entity appropriately designed to remedy the effects of past discrimination thus clearly meets the constitutional standards recently identified in Fullilove, supra, and Bakke, supra.

VII. SUMMARY AND CONCLUSION

The Office of Hawaiian Affairs is a legitimate state response to the obligation the State of Hawaii inherited in 1959 from the federal government to improve the conditions of the native people of this state. OHA is a flexible and innovative entity designed to handle the real and personal property held in trust for the benefit of the descendants of the aboriginal people who inhabited the Hawaiian islands prior to 1778. It also provides a forum for resolving disputes among the Hawaiian community and a mechanism for charting a course for its future.

OHA is comparable in its legal status to the federal government's Bureau of Indian Affairs and to the many state agencies other states have established to promote and protect their native populations. These entities and the preferences they grant to native people are constitutional under a long line of federal cases that hold that the government can grant preferences to native groups because of the "unique legal status" of these groups which developed from the historical and political relationships between the government and the native people. See especially Morton v. Mancari, 417 U.S. 535, 551-55 (1974).

These cases require simply that programs and preferences for native groups "be tied rationally to the fulfillment" of the governments "unique obligation" to the native groups. Id. at 555. The Office of Hawaiian Affairs is certainly a reasonable and rational attempt meet the needs of the native Hawaiians in this community. The state would independently have the power to protect and promote the culture of its native groups--as many states do--and Hawaii's power to act on behalf of native Hawaiians is particularly strong because this responsibility was transferred to the state by the federal government at the time of statehood (1959).

The Supreme Court of Hawaii recently stated explicitly that the state's relationship with native Hawaiians should be evaluated by analogy to the federal government's relationship with other native Americans. Ahuna v. Dept. of Hawaiian Homes Lands, 64 Hawaii 327, 640 P.2d 1161 (1982). The U.S. Congress has also recently included native Hawaiians in a number of statutory programs benefiting the native Americans and has enacted several statutes specifically benefiting native Hawaiians. The precedents that govern native Americans generally thus apply also to native Hawaiians.

Any constitutional question about the legitimacy of the Office of Hawaiian Affairs would also apply to the Hawaiian Homes Lands program, which is also designed to benefit descendants of the aboriginal peoples of these islands. Since 1920, all officials asked about the constitutional legitimacy of the

Hawaiian Homes Lands have concluded that this program meets constitutional requirements. The U.S. Congress and Hawaii's Constitutional Conventions and Legislature have also reached this conclusion. Since the Office of Hawaiian Affairs was created, state officials and attorneys have repeatedly stated that they view this new entity as constitutional and legitimate.

Persuasive policy reasons support special programs and protections for native people. Unlike other ethinc groups, native people never left their homes to migrate to a new land, implicitly accepting a multicultural society. Unlike other ethnic groups, native people have no "mother culture" elsewhere, where their traditions, religion, and language are preserved and developed. Native groups also may have unresolved claims against the government that justify a special political status and preferences for them.

Developing international norms also recognize the appropriateness of protecting native populations. If a final argument is needed, legislatively enacted preferences for native groups can be justified under the affirmative action principles of *Fullilove v. Klutznick*, 448 U.S. 448 (1980).

For all these reasoning, it is clear under our constitutional scheme that the people and legislature of Hawaii acted properly in creating the Office of Hawaiian Affairs. OHA is an appropriate and constitutionally-legitimate entity with broad statutory powers to act on behalf of the native Hawaiian population.

Appendix A - A Brief History of the Relations Between Native Hawaiians and the United States Government

Although this Honorable Court is familiar with Hawaiian history, it is useful to sumarize some highlights of this history to illustrate the similarity between the treatment by the U.S. government of native Hawaiians and its treatment of American Indians and other native groups.

The U.S. Supreme Court justified preferences for natives in Morton v. Mancari, 417 U.S. 535, 552 (1974), a case involving mainland Indians, with the following quotation from the case of Board of County Comm'rs v. Seber, 318 U.S. 705, 715 (1943):

> In the exercise of the war and treaty powers, the United States overcame the Indians and took possession of their lands, sometimes by force, leaving them an uneducated, helpless and dependent people, needing protection against the selfishness of others and their own improvidence. Of necessity, the United States assumed the duty of furnishing that protection, and with it the authority to do all that was required to perform that obligation and to prepare the Indians to take their place as independent, qualified members of the modern body politic.

Although native Hawaiians are not racially linked to the mainland natives (who themselves are diverse and do not fit into easily defined racial patterns), the historical parallels are certainly evident. Native groups on the mainland and here in Hawaii had thriving and sophisticated cultures which were thrown into a period of decline because of contact with and conquest by Western settlers. Similar economic and cultural problems developed. Only now are these native groups emerging from their dark period to take their place once again as strong and proud cultures.

As with mainland native groups, concepts of sovereignty and treaty negotiations with foreign governments are well documented in Hawaiian history. The Kingdom of Hawaii possessed all the attributes of a sovereign nation and was so recognized by the world community of civilized sovereign nations.[1]

The Kingdom of Hawaii entered into its first formal agreement in 1826, with Captain Thomas ap Catesby Jones representing the United States and King Kamehameha III and his guardians representing Hawaii.[2] The agreement stated that:

> The peace and friendship subsisting between the United States, and their majesties, the Queen Regent, and Kauikeaouli, King of the Sandwich Islands, and their subjects and people, are hereby confirmed, and declared to be perpetual.[3]

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[1] See generally Blondin, A Case For Reparations for Native Hawaiians, 16 Hawaii Bar J. 13, 20-21 (1981). The Blondin article provides the framework for this summary, which has also been corroborated by references to other sources.

[2] Treaty with Hawaii on Commerce, Dec. 23, 1826, United States-Hawaii, 3 C. Bevans, Treaties and Other International Agreements of the United States of America 1776 -1949 at 861(1971); Stauffer, The Hawaii-United States Treaty of 1826, 17 Hawaiian Journal of History 40, 55-58 (1983).

[3] Id. (emphasis added).

This treaty was never ratified by the United States Senate but "for more than a decade, after Captain Jones had secured the signatures of Kaahumanu and Kalanimoku to this abortive treaty, American officials and residents of the Hawaiian Islands were seeking to impress upon the perplexed chiefs the sanctity of this agreement which the government of the United States had refused to accept".[4] The U.S. State Department, in a publication on treaties and conventions viewed the articles as:

> . . . clearly an international act, signed as such by the authorities of the then independent Hawaiian Government, and by a representative of the United States, whose instructions, while vague, must be regarded as sufficient authority for his signature, in view of the then remoteness of the region from the seat of [the United States] Government and the general discretion which those instructions granted. . . .[5]

On December 30, 1842, the President of the United States, John Tyler, made an official declaration recognizing Hawaii as a sovereign nation.[6] In full recognition of Hawaiian independence, Congress appointed a U.S. Ambassador to reside in the Islands.[7] The first formal treaty between the United States and the Hawaiian nation dealing with friendship, commerce, and navigation was ratified in 1849 by Congress.[8] And twenty-six years later, in 1875, these two nations entered into a treaty on commercial reciprocity.[9] The treaties of 1826, 1849, and 1875 were never canceled; nevertheless, the United States Government violated the international standards of behavior between sovereigns bound by their treaties.[10] Throughout the nineteenth century, American citizens and American agents interfered with Hawaiian culture, politics and land in an attempt to gain influence and control.[11]

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[4] H. Bradley, Thomas ap Catesby Jones and the Hawaiian Islands, 1826-1827, 39 Hawaiian Historical Society Report 23 (1931); Stauffer, supra note 2, at 53-54.

[5] U.S. State Department, Treaties and Conventions concluded between United States of America and Other Powers since July 4, 1776 at 274 (U.S. State Department, 1886); Stauffer, supra note 2, at 59.

[6] Sen. Ex. Docs., 52 Cong., 2d Sess., No. 77, at 35-37. See also 1 R. Kuykendall, The Hawaiian Kingdom 1778-1854, Recognitions of Independence 195 (1967).

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[7] 1 Kuykendall, supra note 6, at 196.

[8] Treaty with Hawaii on Friendship, Commerce and Navigation, Dec. 20, 1849, United States-Hawaii, 9 Stat. 977, T.S. No. 160. Article 1 stated that "There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors." Other articles enunciated rules of commerce and navigation based on the principal of equality. On March 26, 1855, the Hawaiian Nation acceded to the Convention of July 22, 1854 between the U.S. and Russia, guaranteeing the rights of neutrals at sea. 7 Miller 121.

[9] Treaty with Hawaii on Commercial Reciprocity, Jan. 30, 1875, United States-Hawaii, 19 Stat. 625, T.S. No. 161. In 1884, a second treaty on commercial reciprocity was signed. Treaty with Hawaii on Commercial Reciprocity, Dec. 6, 1884, United States-Hawaii, 25 Stat. 1399, T.S. No. 163. See generally, 1 Native Hawaiians Study Commission, Report on the Culture, Needs and Concerns of Native Hawaiians 265-72 (1983) (hereinafter cited as 1 NHSC Report).

[10] I. Brownlie, Principles of Public International Law 595 (2d ed. 1973).

[11] See, e.g., 1 NHSC Report, supra note 9, at 254-57 and 267-89.

Great Mahele 1848-50

The division of lands during the Mahele period resulted from pressure from Americans and other Westerners.[12] King Kamehameha III was forced to distribute some of the lands but he tried throughout to preserve the rights of the maka`ainana to their lands.[13]

The lands identified in 1848 as Crown Lands, Konohiki Lands, and Government Lands were all subject to the rights of native tenants.[14] In 1850, the legislature authorized the Land Commission to award fee simple titles to all native tenants who occupied and improved any portion of Crown, Konohiki, or Government Lands (with the exception of some districts).[15] But the award was granted only if the claimant submitted a survey of the property boundaries to the Land Commission, and proved that the land was actually being used and cultivated.[16] Most Hawaiians did not fully comprehend the implications of the new land system and less than 1% of all the land in Hawaii was actually awarded to commoners by the Land

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[12] *Id*. at 255.

[13] 1 *Laws of Kamehameha III* at 107; 2 *Revised Laws of Hawaii, 1925* at 2141-2142 [hereinafter cited as *Revised Laws 1925*].

[14] 2 *Revised Laws 1925, supra* note 13, at 2152-2176.

[15] The Kuleana Act of Aug. 6, 1850, *id*. at 2141-2142.

[16] 1 *NHSC Report, supra* note 9, at 256.

Commission.[17] When the Land Commission was terminated in 1855, all those who had failed to apply for claims were barred forever from obtaining a fee simple title.[18]

Fee simple ownership was a concept completely foreign to the Hawaiian population. Many Native Hawaiians lost their lands to enterprising foreigners. By 1890 most usable land was owned or leased by foreign businessmen.[19] But Americans did not stop with their efforts to change Hawaiian land use and ownership. Next they concentrated on controlling the Hawaiian Kingdom, and finally ended the Hawaiian monarchy.[20]

The dilutions of the Hawaiian monarch's supreme authority began with the Constitution of 1840,[21] and continued under the pressure of private landowners.[22] In 1887, a group of influential American businessmen forced the "Bayonet"

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[17] Id.

[18] Id. The Act of May 26, 1853 (2 Revised Laws 1925, supra note 13, at 2145) barred claims not proved by May 1, 1854.

[19] 1 NHSC Report, supra note 9, at 253; R. Horowitz, Public Land Policy in Hawaii: Major Landowners 4-5 (Legislative Reference Bureau Rpt No. 3, 1967).

[20] 1 NHSC Report, supra note 9, at 289-98.

[21] See L. Thurston, The Fundamental Laws of Hawaii 3 (1904); 1 NHSC Report, supra note 9, at 254-55.

[22] 1 NHSC Report, supra note 9, at 267-89.

Constitution [23] on the King. [24] They feared King Kalakaua`s attempts to revitalize the monarchy and Hawaiian culture. Soon thereafter, the Westerners began pushing for the overthrow of the entire Hawaiian government. They formed the Annexation Club in 1892 in hopes of encouraging a United States` takeover.[25] In May 1892, the Annexation Club sent one of its members, Lorrin A. Thurston, to Washington to garner support for annexation. [26] Thurston spoke with the Secretary of the Navy, B.F. Tracy, who spoke with President Benjamin Harrison about the matter. According to Thurston, Tracy reported:

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[23] Hawaiian Const. of 1887, in R. Lydecker, *Roster Legislature of Hawaii 1841-1918* at 159 (1918).

[24] 3 R. Kuykendall, *The Hawaiian Kingdom 1874-1893, The Kalakaua Dynasty* 370 (1967). The Constitution reduced the King`s power in several ways, thereby shifting greater power to sugar cane growers. First, the King`s theretofore absolute power to veto bills passed by the Legislature was changed to allow the Legislature to override the veto by a two-thirds vote of all legislative members. Furthermore, the Constitution imposed a narrow franchise based on the possession of property. The property limitation excluded three out of every four Hawaiians from voting. G. Daws, *Atlas of Hawaii* 26-27 (1970). See also 1 *NHSC Report*, *supra* note 9, at 277-78.

[25] L. Thurston, *Memoirs of the Hawaiian Revolution* 249-50 (1936); 1 *NHSC Report*, *supra* note 9, at 288.

[26] L. Thurston, *supra*, note 25, at 230-32; 1 *NHSC Report*, *supra* note 9, at 288.

> I explained to the President what you have said to me. . . . The President does not think he should see you, but he authorizes me to say to you that, if conditions in Hawaii compel you people to act as you have indicated, and you come to Washington with an annexation proposition, you will find an exceedingly sympathetic administration here.[27]

By January 1893, time became crucial. President Harrison was about to leave the White House and Queen Liliuokalani sought to put a new constitution into effect.[28] A group of Westerners, assisted by John L. Stevens, the American Minister to the Kingdom of Hawaii, and by a detachment of U.S. Marines brought ashore from the U.S.S. Boston, forced Queen Liliuokalani to yield her authority over the Hawaiian government.[29] The insurgents set up a provisional government and later established the Republic of Hawaii. Minister Stevens recognized the provisional government to as the _de facto_ government of the Hawaiian islands. [30]

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[27] L. Thurston, _supra_ note 25, at 230-32; 1 _NHSC Report, supra_ note 9, at 289.

[28] See J. Pratt, _Expansionists of 1898_ at 54 (1936).

[29] Three days before the coup, Minister Stevens assured Thurston that "the United States troops on board the Boston would be ready to land any moment to prevent the destruction of American life and property, and in regard to the matter of establishing a provisional Government, they of course would recognize the existing government whatever it might be. 3 R. Kuykendall, _supra_ note 24, at 588. The Queen issued a formal protest stating that she was yielding "to the superior force of the United States of America. . .until such time as the government of the United States shall upon the fact. . .reinstate me. . .as constitutional sovereign of the Hawaiian Islands." _Id_. at 63.

After the coup, the Provisional Government tried to secure a treaty of annexation. Congress refused to act, however, until Grover Cleveland was sworn in as President. President Cleveland then appointed James H. Blount, a former chair of the House Committee on Foreign Affairs, as special commissioner to Hawaii to investigate the situation. [31] After spending four months in Honolulu, Blount concluded that the overthrow of the Queen had been illegal and recommended that she be restored to power. [32]

In his subsequent message to Congress, President Cleveland observed that the United States` Minister and the military forces of the U.S.S. Boston had acted beyond their proper authority, under the pretense of protecting American life and property. [33] He concluded that the United States should correct such illegal acts by making reparations to the Hawaiian people:

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[30] W.Russ, The Hawaiian Revolution (1893-94) 95 (1961).

[31] 3 R. Kuykendall, supra note 24, at 622.

[32] Papers Relating to the Foreign Relations of the U.S. 189-1 (Appendix II 557).

[33] President`s Message Relating to the Hawaiian Islands, H.R. Exec. Doc., No. 47, 53rd Cong., 2d Sess. XIV-XV (1893).

> . . . By an act of war, committed with the participation of the diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair.[34]

Despite President Cleveland's efforts to restore the monarchy, Congress refused to act and the matter was stalemated until William McKinley, a pro-annexationist, became President in 1897. Sanford Dole, President of the Republic of Hawaii, dispatched a commission to Washington to negotiate a treaty of annexation, which was drafted in June 1897.[35] The Republic of Hawaii's Senate ratified the treaty later that year.[36] In the U.S. Senate, the treaty was held until March 1898 when its supporters concluded that they were unable to assemble the two-thirds majority required for ratification.[37] The annexationists then changed tactics, and on March 16, 1898, introduced a "joint resolution" to accept the treaty, which required only a simple majority of both houses.[38] The resolution passed the House and Senate [39] and then was signed by President McKinley. [40]

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[34] Id. at IX-XIV.

[35] NHSC Report, supra note 9, at 301.

[36] Id.

[37] Id.; J. Pratt, supra note 28, at 225.

[38] S.R. Doc. No. 681, 55th Cong., 2d Sess. 225 (1898); and see 31 Cong. Rec. 4600 (1898).

Although this action was taken without consultation with or the consent of the native Hawaiian community -- most of whom were disenfranchised during the "Republic of Hawaii" period [41] -- Congress nonetheless recognized its continuing obligation to the native Hawaiians and expressed in 1898 and 1900 its preliminary understanding of the trust obligation owed to the Hawaiian people. The 1898 Joint Resolution provided that the Crown and Government lands ceded to the United States would not be managed according to normal United States land law, but "the Congress of the United States shall enact special laws for their management and disposition" and all the revenues and proceeds from ceded lands "shall be solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes".[42] The Organic Act, passed by Congress in 1900 to establish a government for the Territory, provided for native Hawaiian land rights by leaving open the issue of land claims for future settlement. The Act provides that:

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[39] The resolution passed the House by a vote of 209 to 91, 31 Cong. Rec. 6018 (1898). The resolution passed the Senate with 42 in favor of the resolution, 21 against, and 26 abstentions, 31 Cong. Rev. 6712 (1898).

[40] Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States, 30 Stat. 750 (1898). For a discussion of the legal effect of this resolution as opposed to a treaty, see Liliuokalani v. United States, 45 Ct. Cl. 429 (1910).

[41] 3 R. Kuykendall, _supra_ note 24, at 585.

> The laws of Hawaii relating to public lands. . . shall continue in force until Congress shall otherwise provide.[43]

In 1921 Congress reaffirmed its obligations to native Hawaiians by enacting the Hawaiian Homes Commission Act.[44] The Act placed more than 200,000 acres of land in trust for native Hawaiians[45] to help rehabilitate native Hawaiians by returning them to a farming life-style.[46]

The legislative history of this statute aids our modern understanding of how Congress viewed its obligations to the native Hawaiians. John Wise, a member of Hawaii's Territorial Senate, went to Washington in 1920 and presented the following argument to the Committee in the House of Representative which was considering what to do with these lands:

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[42] 30 Stat. 750, sec. 91 (1898).

[43] Act of April 30, 1980, 31 Stat. 141, sec. 73.

[44] Hawaiian Homes Commission Act, Act of July 9, 1921, 42 Stat. 108(1921).

[45] Id. These trust lands were part of the more than two million acres of Crown and Government lands taken in the 1893 overthrow and later ceded to the United States upon annexation in 1898.

[46] M.Vause, The Hawaiian Homes Commission Act, 1920: History and Analysis, 121 (unpublished thesis in University of Hawaii Library, 1962). When initially conceived, the program was strikingly similar to the allotment schemes introduced by the United States on the mainland Indian reservations. Hawaiians were linked to Indians and precedents for the rehabilitative programs were found in policies of the Federal Government relative to Indians. Id. at 114.

> (1) . . . "In the Great Mahele . . . the common people of Hawaii, who at that time constituted almost exclusively members of the Hawaiian race, did not receive their just share of the lands of the kingdom."
>
> (2) . . . "crown lands, were and are impressed with a trust in favor of the common people which has never been executed in their favor."
>
> (3) . . . "at the time of the overthrow . . . the crown lands were . . . confiscated."
>
> (4) . . . "equitably, and as a measure of belated justice, the Hawaiian people are entitled . . . to preferential treatment in the further disposition of these lands. . ."
>
> (5) . . . "Whether the said equitable claim shall be considered as established or otherwise . . . the Hawaiian race is dying out, and legislation should be enacted for the special advantage of the Hawaiian people. . ." [47]

The Chair of the Committee agreed with Wise:

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[47] Senator Wise's arguments are summarized in a brief filed to the Committee by Harry Irwin, Attorney General of Hawaii, Hearings on Proposed Amendments to the Organic Act of the Territory of Hawaii Before the House Committee on Territories, 66th Cong., 2d sess., 56 (1920).

[48] Id. at 30 (emphasis added).

> Chairman Charles F. Curry: "There is equity and justice in saying that these crown lands belonged to the Hawaiian people . . . I think you [Wise] are trying to impress upon the committee the fact that from your standpoint these crown lands never really vested in the Federal Government except in trust for the common people. . . and just as we have provided lands for the Indians, we may use these lands to provide for the Hawaiian race.[48]

Despite these good intentions, because of pressure from the sugar interests, most of the lands that went into the Hawaiian Homes program were arid and of marginal agricultural value, and the sugar companies continued to lease the fertile lands.[49]

Another important feature of the Congressional legislation during this period was that the original bill before Congress would have let all persons with at least 1/32 Hawaiian blood participate in the Home Lands. But the Territorial Legislature in Hawaii (dominated by the sugar interests) thought this arrangement would lead to a demand for too much land and so they asked Congress to limit eligibility to persons with at least 50 percent Hawaiian blood.[50] This limitation was not an idea developed in Congress, but instead was imposed by the Westerners in Hawaii.

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[49] See, e.g., H.Doi Land Aspects of the Hawaiian Homes Program 6-7, 19-20 (Legislative Reference Bureau Rpt 1b, 1964).

[50] See, e.g., Vause, supra note 46, at 132, citing editorials in the Honolulu Star Bulletin, July 22, 1920, and April 18, 1921, and in the Pacific Commercial Advertiser, Oct. 13, 1920.

The trust obligation that Congress recognized in 1898, 1900, and 1921 was acknowledged again in the 1959 Admissions Act sections 5(f), which specifically names native Hawaiians as intended beneficiaries of the profits of the lands ceded to the U.S. government in 1959. [51] About 1.5 million acres of these lands have been returned to the State and the 1980 legislature stated that OHA should receive 20% of the funds derived from these lands.[52] This background and the principles that follow from it are undisputed. This lawsuit raises questions about certain details on how the moneys are to be determined.

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[51] Act of March 18, 1959, Publ. L. 86-3; 73 Stat. 4, sec. 5(f).

[52] Hawaii Rev. Statutes 10-13.5.

APPENDIX B

GEORGE R. ARIYOSHI
GOVERNOR

WAYNE MINAMI
ATTORNEY GENERAL

LARRY L. ZENKER
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STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
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[illegible]

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Op. No. 80-8

July 8, 1980

The Honorable Duke Kawasaki
Vice President of the Senate
The Honorable Neil Abercrombie
State Senator, Sixth District
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Senators Kawasaki and Abercrombie:

This is in response to your request for this office's opinion regarding the constitutionality of Article XII, Section 5 of the Hawaii State Constitution, which constitutional provision establishes the Office of Hawaiian Affairs (OHA). That section provides as follows:

> "There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are Hawaiians, as provided by law. The board members shall be Hawaiians. There shall be not less than nine members of the board of trustees; provided that each of the following Islands have one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The board shall select a chairperson from its members."

You have requested us to address two specific issues:

(1) Whether the requirement that the members of the board of trustees "shall be Hawaiians" is violative of the equal protection of the laws guaranteed by Art. I, Section 5 of the State Constitution 1/ or the Fourteenth Amendment to the United States Constitution 2/; and

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1/ Art. I, Section 5, Hawaii State Constitution states:

> "No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry."

2/ The Fourteenth Amendment to the United States Constitution provides in relevant part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(2) Whether the restriction of the electoral franchise to Hawaiians for the purpose of electing a board of trustees for OHA violates Art. II, Section 1 of the State Constitution 3/ or the Fourteenth and Fifteenth Amendments to the Federal Constitution. 4/

3/ Art. II, Section 1, Hawaii State Constitution provides:

> "Every citizen of the United States who shall have attained the age of eighteen years, have been a resident of this State not less than one year next preceding the election and be a voter registered as provided by law, shall be qualified to vote in any state or local election."

Note: In Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed.2d 274 (1972), the United States Supreme Court held that durational residency requirements violated the equal protection clause because they were unnecessary to promote a compelling interest, either to prevent fraudulent voting by non-residents or to further the goal of having knowledgeable voters. However, this discussion does not concern the validity of durational residence requirements.

4/ The Fifteenth Amendment to the Federal Constitution states in pertinent part:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

We have carefully reviewed the Committee Reports of the Constitutional Convention of 1978; the legislative history of the implementing legislation, (Chapter 10, Hawaii Revised Statutes); historical materials; decisional law addressed to the guarantee of equal protection of the laws contained in Art. I, Section 5 of the Hawaii Constitution and the Fourteenth Amendment to the Federal Constitution; the special equal protection treatment accorded to legislation concerning Native Americans or aboriginal peoples; and cases which have distinguished elections of special interest from elections of general interest,and we are persuaded that the subject constitutional provisions are not constitutionally infirm.

We will discuss the issues raised in your letter in turn.

At the outset, it must be remembered that constitutional amendments ratified by the electorate are presumed to be valid and will be upheld unless they can be shown to be invalid beyond a reasonable doubt. Kahalekai v. Doi, 60 Haw. 325, 590 P.2d 543 (1979).

The function of the Equal Protection Clause is to measure the validity of classifications created by state law.

As a result of the plethora of cases addressed to the constitutionality of state laws when challenged as violative of the Equal Protection Clause, three tests have evolved to measure the validity of challenged classifications.

They are referred to as the "rational basis" test; the "compelling state interest" test; and a standard intermediate between rational basis and strict scrutiny.

It is best explained in the case of Holdman v. Olim, 59 Haw. 346, 581 P.2d 1164 (1978). Plaintiff Holdman challenged a directive which imposed dress restrictions upon women visitors to an all-male prison, as violative of the Equal Protection Clauses of the Federal and State Constitutions on the ground that this was an impermissible sex-based classification.

In testing the directive under the Fourteenth Amendment, the Supreme Court of Hawaii stated:

> "A challenge to a legislative classification as violative of the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution is ordinarily resolved by inquiring whether a rational basis exists for the classification. Nelson v. Miwa, 56 Haw. 601, 546 P.2d 1005 (1976). But "this court has recognized that laws classifying on the basis of suspect categories or impinging upon fundamental rights expressly or impliedly granted by the Constitution are presumed to be unconstitutional unless the state shows compelling state interests which justify such classifications." Nelson v. Miwa, supra at 605, n.4. This court has not dealt with a sex-based classification. In Frontiero v. Richardson, 411 U.S.677 (1973), a plurality of the United States Supreme Court favored the inclusion of classifications based upon sex among those considered to be suspect for the purposes of the compelling state interest test. However, subsequent cases have made it clear that the current governing test under the Fourteenth Amendment is a standard intermediate between rational basis and strict scrutiny. "[C]lassifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." Craig v. Boren, 429 U.S. 190, 197 (1976). Also see Califano v. Goldfarb, 430 U.S. 199, 209 (1977) and Califano v. Webster, 430 U.S. 313, 316-17 (1977)." 59 Haw. 350

The Court found that the directive met the test under the Fourteenth Amendment, stating:

> "It is manifest that the directive was substantially related to the achievement of the important governmental objective of prison security and met the test under the Fourteenth Amendment." 59 Haw. 351.

The Court then tested the directive against the Equal Protection Clause of the Hawaii Constitution which declares that no person shall be "denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry."

The Court reasoned:

> "It is open to this court, of course, to apply the more stringent test of compelling state interest to sex-based classifications in assessing their validity under the equal protection clause of the state constitution. State v. Kaluna, 55 Haw. 361, 520 P.2d 51 (1974). Appellant urges that we do so, arguing both from Frontiero v. Richardson, supra, and from the presence of sex with race, religion and ancestry as a category specifically named in Article I, Section 4.
>
> We need not deal finally with that issue, and reserve it for future consideration, since we conclude that the compelling state interest test would be satisfied in this case if it were held to be applicable. It is apparent that the bar against sex-based classification is not absolute under the strictest test which has been applied under the Fourteenth Amendment. Even if a sex-based classification is deemed to be suspect and thus subject to stricter scrutiny under the equal protection clause of Article I, Section 4 than under the equal protection clause of the Fourteenth Amendment, such scrutiny involves consideration of whether

> the use of the suspect classification is necessary to protect a compelling state interest. We do not use these terms to define the limits to be drawn under the test of strict scrutiny, but only to indicate that *state action which is challenged under the equal protection clause will survive strict scrutiny if the state demonstrates a sufficiently important interest and employs means which are closely enough drawn.* *Cf. Buckley v. Valeo*, 424 U.S. 1, 25 (1976)." 59 Haw. 351, 352, (Emphasis added).5/

However, the United States Supreme Court has accorded special equal protection treatment to legislation singling out for special treatment Native Americans or aboriginal people.

The leading United States Supreme Court decision on the subject of Indian preference is that in *Morton v. Mancari*, 417 U.S. 535, 41 L.Ed.2d 290 (1974), wherein an attack was made on preferential hiring of Indians within the Bureau of Indian Affairs. The argument was that this was a classification which was invidious.

5/ Article I, Section 4 of the Hawaii Constitution has been renumbered Article I, Section 5 as a result of the Constitutional Convention of 1978 and election of November 7, 1978.

Apparently employing a standard between rational basis and strict scrutiny, the Court concluded that the preference was reasonably and directly related to a legitimate, nonracially based goal and thus not constitutionally objectionable.

The United States Supreme Court reasoned:

> "Contrary to the characterization made by appellees, this preference does not constitute "racial discrimination." Indeed, it is not even a "racial" preference. Rather, it is an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups. It is directed to participation by the governed in the governing agency. The preference is similar in kind to the constitutional requirement that a United States Senator, when elected, be "an Inhabitant of that State for which he shall be chosen," Art. I, § 3, cl 3, or that a member of a city council reside within the city governed by the council. Congress has sought only to enable the BIA to draw more heavily from among the constituent group in staffing its projects, all of which, either directly or indirectly, affect the lives of tribal Indians. The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion. See n 24, supra. In the sense that there is no other group of people favored in this manner, the legal status of the BIA is truly sui generis. Furthermore, the preference applies only to employment in the Indian service. The preference does not cover any other Government agency or activity, and we need not consider the obviously more difficult question that would be presented by a blanket exemption for Indians from all civil service examinations. Here, the preference is reasonably and directly related to a legitimate, nonracially based goal. This is the principal characteristic that generally is absent from proscribed forms of racial discrimination." 41 L.Ed.2d 302, 303.

In testing the subject constitutional provision requiring that the members of the board of trustees of OHA be Hawaiians and be elected by Hawaiians, we must also consider the facts and circumstances of the law, the interests which the State claims to be protecting and the interests of those who are disadvantaged by the classification. Kramer v. Union Free School Dist., 395 U.S. 621, 23 L.Ed.2d 583 (1969).

The purposes for which OHA were created are reflected in the committee reports of the Constitutional Convention of 1978 (see Standing Committee Report No. 59, August 29, 1978; Committee of the Whole Report No. 13, September 5, 1978); the legislative history of the implementing legislation (see Standing Committee Report No. 784, Senate Journal p. 1350-1360); and the codification contained in Chapter 10, Hawaii Revised Statutes.

The declared purpose for the creation of OHA is set forth in the Hawaii Revised Statutes as follows:

> §10-1 Declaration of purpose. (a) The people of the State of Hawaii and the United States of America as set forth and approved in the Admission Act, established a public trust which includes among other responsibilities, betterment of conditions for native Hawaiians. The people of the State of Hawaii reaffirmed their solemn trust obligation and responsibility to native Hawaiians and furthermore declared in the state constitution that there be an office of Hawaiian affairs to address the needs of the aboriginal class of people of Hawaii.

"Native Hawaiians" and "Hawaiians" are defined as follows in § 10-2:

> (4) "Native Hawaiian" means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii.
>
> (5) "Hawaiian" means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.

The Hawaii Revised Statutes § 10-3, sets forth the purposes of OHA to include the following:

> (1) The betterment of conditions of native Hawaiians. A pro rata portion of all the funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18,

1959 (73 Stat, 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands", by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e);

(2) The betterment of conditions of Hawaiians;

(3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;

(4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;

(5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and

(6) Serving as a receptacle for reparations.

The justification for a constitutional provision and implementing legislation addressing the needs of a specific people, the Hawaiians, may be summarized as follows:

1. The Hawaiians enjoy a unique or special status as native Americans. The Native American Religious Freedom Act of 1978 (92 Stat. 469) which classified Hawaiians as Native Americans recognizes and encourages the value of preserving traditional but dying culture and religious practices of its indigenous peoples. Hawaiian culture and traditions will be lost unless special protection is permitted. The preservation of Hawaiian culture is a sufficiently important governmental interest and it is clearly in the public interest to allow Hawaiians to determine how best this goal can be achieved. Cf Livingston v. Ewing, 601 F.2d 1110, 1112 (10th Cir.1979).

2. OHA insures that native Hawaiians will receive a direct beneficial interest from public lands (other than "available lands") as had been intended by the Admission Act. Standing Committee Report, 784, Senate Journal 1350, 1351 states:

> "When Hawaii was admitted into the Union, the Admission Act, among other things, (1) required that the Hawaiian Homes Commission Act be "adopted as a provision of the Constitution" of the State of Hawaii; (2) granted to Hawaii "title to all the public lands and other public property, and to all lands defined as 'available lands' by . . . the Hawaiian Homes Commission Act;" and (3) required that all "such lands and the income therefrom, shall be held by said State as a public trust for the following five purposes:
>
> (1) Support of the public schools and other public educational institutions;
>
> (2) Betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended;

> (3) The development of farm and home ownership on as widespread a basis as possible;
>
> (4) The making of public improvements; and
>
> (5) The provision of land for public use.
>
> Interpretation of the Public Trust. Your Committee notes that there were at least two ways of interpreting the "public trust" required by the Admission Act. The first is that such public trust is fulfilled with respect to the "betterment of the conditions of native Hawaiians" by virtue of the "available lands" of the Hawaiian Homes Commission Act being held and used in the interest of "native Hawaiians" as there provided. By such interpretation, all of the income from public lands transferred to Hawaii other than "available lands" could be utilized without a portion thereof being used specifically for native Hawaiians. Apparently, this is the interpretation that has been followed, as such income has by and large flowed to the department of education.
>
> The other interpretation is that part of the income from public lands other than "available lands" was intended for the "betterment of the conditions of native Hawaiians" in addition to the "available lands" and their income benefiting native Hawaiians under the Hawaiian Homes Commission Act. By this interpretation, native Hawaiians have not received direct beneficial interest from the public lands (other than "available lands") as had been intended by the Admission Act."

Thus, the fulfillment of the State's trust obligations and responsibilities to native Hawaiians is a sufficiently important governmental interest to justify the creation of OHA.

3. Self-determination for all Hawaiians - as aboriginal people - the right to determine priorities to improve their welfare and the preservation of their culture is a recognized justification of special legislation. (Committee of the Whole Rep. No. 13, Constitutional Convention, p.3). In a series of cases addressed to Congress' unique obligation toward the Indians, the courts have made clear that proper fulfillment of its trust required turning over to the Indians a greater control of their own destinies. *Morton v. Mancari*, *supra*. Thus, self-determination of aboriginal people to whom the government has a specific trust commitment to better their conditions, has been recognized as an important and even compelling state interest.

We must next consider whether the means employed to further the above mentioned important governmental interests are closely enough drawn to satisfy even the strict scrutiny test. *Holdman v. Olim*, *supra*.

In order to more effectively promote and satisfy the dual purposes of OHA, i.e., the betterment of the conditions of native Hawaiians and address the needs of the aboriginal class of people of Hawaii, the delegates to the Constitutional Convention were of the unanimous opinion that the people to whom the assets belong should have control over them.

In Standing Committee Report No. 59, it is stated:

> "Your Committee is unanimously and strongly of the opinion that people to whom assets belong should have control over them. After much deliberation and attention to testimony from all parts of the State, your Committee concluded that a board of trustees chosen from among those who are interested parties would be the best way to insure proper management and adherence to the needed fiduciary principles. In order to insure accountability, it was felt that the board should be composed of elected members. This amendment provides for direct participation in the selection

> process of the board of trustees by all native Hawaiians. The Committee determined that such participation will avoid the much justified criticism which has been directed at the Hawaiian Homes Commission, for among other things, its inability to respond adequately to the needs of native Hawaiians of one-half blood. The election of the board will enhance representative governance and decision making accountability and, as a result, strengthen the fiduciary relationship between the board member, as trustee, and the native Hawaiian, as beneficiary. The cost of electing the board of trustees would be nominal, provided it is held at the same time as the state general elections."

The Committee of the Whole Report No. 13 had this to state in regard to the provision that members of the board of trustees be Hawaiian:

> "Moreover it appears that the Committee on Hawaiian Affairs closely examined this issue. If one looks to the precedent of other native proples, one finds that they have traditionally enjoyed self-determination and self-government. They have power to make their own substantive rules in internal matters. Although no longer possessed of the full attributes of sovereignty, they remain a separate people with the power of regulation over their internal and social problems. The establishment of the Office of Hawaiian Affairs is intended to grant similar rights to Hawaiians. The qualification for office and exercising the franchise does not constitute discrimination. Rather it is a criterion reasonably designed to further the cause of Hawaiian self-government and to make the Office of Hawaiian Affairs more responsive to the needs of its constituents. It is directed to participation by the governed in the governing agency. This qualification does

> not cover any other government agency or activity. In conclusion, these provisions are constitutional due to the unique legal status of Hawaiians. (See Santa Clara Pueblo, et al v. Julia Martinez, et al., 46 L.W. 4412 (5/16/78); Morton v. Mancari, 417 U.S. 535 (1974)."

In testing the federal laws of according preference to Indians in the Indian service, the Court in Morton v. Mancari, supra, stated:

> "The purpose of these preferences, as variously expressed in the legislative history, has been to give Indians a greater participation in their own self-government, to further the Government's trust obligation toward the Indian tribes, and to reduce the negative effect of having non-Indians administer matters that affect Indian tribal life."
> 41 L.Ed.2d 295, 296 (footnotes omitted)

Similarly, the qualification for office for members of the board of trustees of OHA, as reflected by the Committee Reports is to give Hawaiians a greater participation in their goal of self-determination; to further the State's trust obligation toward betterment of the conditions of native Hawaiians; to reduce the negative effect of having non-Hawaiians administer matters that affect programs and activities relating to native Hawaiians and Hawaiians; and that a board of trustees chosen from among those who are directly interested parties would be the best way to insure proper management and adherence to the needed fiduciary principles.

Additionally, the interests of those who are disadvantaged by the classification are minimal or peripheral. Although non-Hawaiians may be interested in the preservation of the culture and traditions of the Hawaiians; in the fulfillment of the State's trust obligations to the native Hawaiians; and as all taxpayers, are generally interested in the valid expenditure of public funds, it is the Hawaiians as a class who will be directly and substantially affected by OHA decisions.

Since the interest of those who claim to be disadvantaged by a classification is a factor to be considered in determining whether a state law violates the Equal Protection Clause, (see Kramer v. Union Free School Dist., supra) the disproportionate impact on Hawaiians as a result of the board's decisions supports the reasonableness of the condition that members of the board be Hawaiians.

Applying the standards set forth in Morton v. Mancari, supra, the qualification contained in Art. XII, Sec. 5 of the Hawaii Constitution is reasonably and directly related to a legitimate, nonracially based goal and would not be considered violative of the Fourteenth Amendment.

Nor would an equal rights challenge be sustained under Art. I, Section 5 of the Hawaii Constitution since the State can demonstrate sufficiently important interests and the means employed to further them are closely enough drawn.

Referring to the second issue raised concerning the constitutionality of the constitutional provision limiting the electoral franchise to qualified voters who are Hawaiians, it is important to consider whether this involves an "election" as contemplated by Art. II, Section 1 of the Hawaii Constitution or the Fifteenth Amendment to the Federal Constitution.

The United States Supreme Court has said that in cases where public officials with legislative or other governmental power are to be elected by the people, the Constitution requires that the electoral franchise must generally reflect a regime of political suffrage based upon "one man, one vote."

Examples of that constitutional doctrine are the Supreme Court's decisions in Kramer v. Union Free School District, supra, involving the franchise to vote for the members of a school board; and Hadley v. Junior College District, 397 U.S. 50, 25 L.Ed.2d 45 (1970).

As in all constitutional guarantees, the guarantee of the right to vote is not absolute.

The United States Supreme Court has distinguished elections of special interest from elections of general interest. Issues of special interest involve limited purposes which so disproportionately affect an identifiable group of voters that a state may restrict the franchise to them or give their votes special weight. Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719, 35 L.Ed.2d 659 (1973). 6/

6/ The Court noted that the water storage district at issue in Salyer Land Co. did not exercise normal governmental authority, thus the popular election requirements enunciated in Reynolds v. Sims, 377 U.S. 533, 12 L.Ed.2d 506 (1964) and its progeny were inapplicable to elections such as the general election of Water Storage District.

In contrast, normal governmental functions present questions of general interest to which the requirement of an unrestricted electorate prescribed by Cipriano v. City of Houma, 395 U.S. 701, 23 L.Ed.2d 647 (1969); Phoenix v. Kolodziejski, 399 U.S. 204, 26 L.Ed2d 523 (1970); and Hill v. Stone, 421 U.S. 289, 44 L.Ed.2d 172 (1975) applies. See also Hayward v. Clay, 573 F.2d 183 (4th Cir. 1978).

In order to determine whether the State may constitutionally restrict the franchise to Hawaiians for the purpose of electing a board of trustees of OHA, it is essential to consider the powers and duties of the board in conjunction with the statutory framework of OHA.

Art. XII, Section 6 of the Hawaii Constitution sets forth generally the powers of the board of trustees. It provides as follows:

> "The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians; to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board."

Pursuant to statute, OHA is structured as a public corporation, which is declared to be a separate entity independent of the executive branch. 7/ (H.R.S. § 10-4).

Specific powers of the board of trustees are set forth in H.R.S. §§ 10-5 and 10-6.

A review of the same clearly demonstrates that the board does not exercise normal governmental authority, but the board is restricted, constitutionally and statutorily to exercise control over real and personal property, set aside and earmarked for native Hawaiians and Hawaiians, from whatever source.

Since Hawaiians are so disproportionately affected by the actions of the board, the election of members of the board can best be characterized as an election of special interest, as described in Salyer Land Co.

Furthermore, the so-called "election" is not an "election" within the aforementioned constitutional provisions. The nature of the election is more in the nature of an election held by the stockholders of a private corporation in the management of its affairs.

7/ It is well recognized that the power of the legislature to create public corporations is practically unlimited. It may create any conceivable kind of corporation it sees fit for the more efficient administration of public affairs, and endow such corporation and its officers with such powers and functions as it deems necessary and proper for the administration of the corporate affairs. Board of Education v. Upham, 357 Ill. 263, 191 N.E. 876, 877 (1934).

In People v. Parker, 192 P.2d 417 (Colo.1948), the Supreme Court of Colorado was called upon to review the constitutionality of a provision of the Soil Conservation Act restricting the vote to qualified voters of the soil erosion district.

The court held that the soil erosion district was a public corporation with purposes primarily for the mutual benefit of landowners of the district and the "election" in the soil erosion district for which provision was made by amendment of the Soil Conservation Act relating to submission of land use ordinances to qualified voters of the district, was not an "election" contemplated by a constitutional provision for adoption of referred measures by majority vote at "elections".

The court stated:

> "The so-called election upon the question of adopting land use ordinances is not an election within the Constitutional provision, but is more in the nature of an election held by the stockholders of a private corporation in the management of its affairs. The questions as to whether or not a voter at such election is a "qualified elector," whether he may vote by proxy, or whether such voter is a corporation or an individual, or whether he resides in Colorado or elsehwere, are wholly immaterial. The realtor, as the trial court found, was primarily organized for the benefit of the owners of the land in the district. The owners' interests are in no way affected by their place of residence. They have a legal right to own real estate in Colorado regardless of their place of domicile and to take all legal means for the improvement and protection of such property. Their right to vote for or against the creation of a district, or for or against the adoption of land use ordinances, springs from ownership of land." 192 P.2d 421.

Similarly, the right of Hawaiians and native Hawaiians to vote for members of the board of trustees of OHA springs from their beneficial interest in the trust res.

Whether the subject constitutional provision is viewed as not being an "election" within the contemplation of Art. II, Section 1 of the Hawaii Constitution or the Fifteenth Amendment, or whether the election is characterized as an election of special interest involving limited purposes which so disporportionately affect an identifiable group of voters, we believe that the State may constitutionally restrict the franchise to qualified voters who are Hawaiians for the limited purpose of electing members of the board.

We do not perceive other constitutional infirmities in Article XII, Section 5 of the Hawaii Constitution.

If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

Charlotte E. Libman

CHARLOTTE E. LIBMAN
Deputy Attorney General

APPROVED:

Wayne Minami

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APPENDIX C

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AUG 13 1981

at 10 o'clock and 48 min. A M.
WALTER A. Y. H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JOSIAH L. HOOHULI, G. ANALIKA N. VICTOR, LINDA DELA CRUZ, APOLONIA K. DAY, DANIEL DANCIL, WILMA LIKOLEHUA KAMAKANA GRAMBUSCH, JUDITH K. NAPOLEON, DANETTE K. RAYFORD, JOHNNY L. RAYFORD, SOLOMON P. KAHOOHALAHALA, BUD SHASTEEN and TAX PAYERS UNION, Plaintiffs, vs. GEORGE R. ARIYOSHI, Governor; JENSEN S.L. HEE, Director of Finance; HIDEO MURAKAMI, Comptroller; ADELAIDE "FRENCHY" DESOTO, JOSEPH G. KEALOHA, JR., RODNEY K. BURGESS, III, THOMAS K. KAULUKUKUI, SR., PETER K. APO, ROY L. BENHAM, MOSES K. KEALE, SR., WALTER L. RITTE, JR., and A. LEIOMALAMA SOLOMON, Trustees and EDWIN P. AULD, Administrator, Office of Hawaiian Affairs; State of Hawaii, Defendants.	CIVIL NO. 81-0182 MOTION TO DISMISS COMPLAINT OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION; AFFIDAVITS OF EDWIN P. AULD, APPENDICES "A", "B", "C", AND "D"; NOTICE OF MOTION

(CERTIFICATE OF SERVICE ATTACHED)

not have enacted it in the first place.

In the event this Court considers the issue of whether the terms "Hawaiian" and "native Hawaiian" are racially discriminatory and constitutionally offensive, Defendants respectfully invite the Court's attention to the case entitled Morton v. Mancari, 417 U.S. 535, 41 L. Ed. 2d 290 (1974) which case was relied upon by the delegates to the Constitutional Convention, as well as the Legislature, in drafting the challenged legislation. (See Constitutional Convention Committee on the Whole Report No. 13, p. 4, which states: "In conclusion, these provisions are constitutional due to the unique legal status of Hawaiians." (see Santa Clara Pueblo, et al v. Julia Martinez, et al., 46 L.W. 4412 (5/16/78); Morton v. Mancari, 417 U.S. 535 (1974); and Standing Committee Report No. 784).

In Morton v. Mancari, supra, an attack was made on preferential hiring of Indians within the Bureau of Indian Affairs. The argument was that this was a classification which was invidious.

The United States Supreme Court rejected the claim that a hiring preference for Indians in the B.I.A. violated the Fifth Amendment's due process clause guaranty of equal protection.

Apparently employing a standard between rational basis and strict scrutiny, the Court concluded that the preference was reasonably and directly related to a legitimate, nonracially based goal and thus not constitutionally objectionable.

> "Contrary to the characterization made by appellees, this preference does not constitute "racial discrimination." Indeed, it is not even a "racial" preference. Rather, it is an employment criterion reasonably

> designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups. It is directed to participation by the governed in the governing agency. The preference is similar in kind to the constitutional requirement that a United States Senator, when elected, be "an Inhabitant of that State for which he shall be chosen," Art. I, § 3, cl 3, or that a member of a city council reside within the city governed by the council. Congress has sought only to enable the BIA to draw more heavily from among the constituent group in staffing its projects, all of which, either directly or indirectly, affect the lives of tribal Indians. The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion. See n 24, supra. In the sense that there is no other group of people favored in this manner, the legal status of the BIA is truly sui generis. Furthermore, the preference applies only to employment in the Indian service. The preference does not cover any other Government agency or activity, and we need not consider the obviously more difficult question that would be presented by a blanket exemption for Indians from all civil service examinations. Here, the preference is reasonably and directly related to a legitimate, nonracially based goal. This is the principal characteristic that generally is absent from proscribed forms of racial discrimination."
> 41 L.Ed. 2d 302, 303.

The importance of the decision for our purpose is that: (1) The Supreme Court recognized that there exists a special and unique relationship between a sovereign body and the aboriginal class of people in its territory that justifies preferential treatment. In the case of the State of Hawaii, the Federal Government, the State of Hawaii and the people of the State of Hawaii, in amending their Constitution, recognized a particular obligation and responsibility of the State to address the needs of the aboriginal class of people of Hawaii. HRS § 10-1(a);

(2) A class of aboriginal people is not a "racial" class as such, that would invalidate the use of some degree of preference to promote the overall purpose of remedial legislation to address their needs;

(3) Although the immediate purposes of Chapter 10, HRS and Article XII, Hawaii State Constitution, as stated in HRS § 10-1(a) are to reaffirm the State's trust obligation to the native Hawaiians and address the needs of the aboriginal class of people of Hawaii, the overall purpose, as stated in Conference Committee Report No. 77 on H.B. 890, Senate Journal, p. 998 is to afford all the Hawaiians equal participation in the ultimate homogeneous society that the State seeks to achieve.

Both the delegates to the Constitutional Convention and the Legislature had sufficient data before them to conclude that the Hawaiians, regardless of blood quantum, were overrepresented in the prisons, on the welfare rolls, in the number of school dropouts and underrepresented in the business, professional and political life of the State and could rationally conclude that this resulted from the loss of their lands and their traditional way of life.

These are sufficiently important State interests to support the constitutionality of the objective of betterment of conditions of native Hawaiians and Hawaiians.

(4) Where the aboriginal people to whom the legislation is addressed are all descendants of those aboriginal peoples inhabiting the territory, all of whom suffered the consequences of Western conquest, special treatment can be tied rationally to the fulfillment of the sovereign's unique obligation toward them. The blood quantum of such descendants of the aboriginal people, has no relevancy in regard to the underlying purpose of the remedial legislation;

(5) The Hawaiians enjoy a unique or special status as native Americans. The Native American Religious Freedom Act of 1978 (92 Stat. 469) which classified Hawaiians as Native Americans recognizes and encourages the value of preserving traditional but dying culture and religious practices of its indigenous peoples. Hawaiian culture and traditions will be lost unless special protection is permitted. The preservation of Hawaiian culture is a sufficiently important governmental interest and it is clearly in the public interest to allow Hawaiians to determine how best this goal can be achieved. Cf Livingston v. Ewing, 601 F.2d 1110, 1112 (10th Cir. 1979).

Thus there is ample precedent to support the constitutionality of OHA legislation.

(6) The OHA legislation which (a) reaffirms and facilitates Congress' trust obligations to native Hawaiians as recognized in the Hawaiian Homes Commission Act and again in the Admission Act of 1959 and (b) which addresses the needs of the aboriginal class of people of Hawaii satisfies the criteria of Mancari in that the preference accorded to native Hawaiians and Hawaiians is reasonable and rationally related to the fulfillment of Hawaii's unique obligation toward the Hawaiians.

Thus, whether this Court utilizes the rational basis test, the Mancari standard, or the compelling state interest test, we believe that the subject legislation passes constitutional muster because there are sufficiently important interests for the State to protect.

Appendix D

The Honolulu Advertiser
Thursday, October 20, 1983
p. A-3

Ariyoshi doesn't back OHA challenge

By Jerry Burris
Advertiser Politics Editor

A state administration court challenge to the constitutionality of the Office of Hawaiian Affairs does not represent his personal opinion about the agency, Gov. George Ariyoshi said yesterday.

Ariyoshi's comments came as some 60 Hawaiians and other protesters gathered in the rainy state Capitol rotunda for a low-key rally to protest the constitutional challenge. The attorney general, in a response to an OHA suit, recently argued that OHA may be unconstitutional under the U.S. Constitution.

That response, Ariyoshi said, is part of good legal practice. But it doesn't represent his own thinking, he said.

"I had nothing to do with that representation," he said. "I have no intention of raising the constitutional question. So far as I am concerned, I see it (OHA) as constitutional.

"But once a suit has been filed, the lawyers have to do the best job they can possibly do for this state."

While the attorney general's office found OHA "not constitutionally infirm" in a 1980 legal opinion, Ariyoshi admitted, that ruling and a legal response in court "are two different things."

In his years of dealing with OHA, Ariyoshi said, the constitutional question "has never been raised."

Meanwhile, the attorney general's office has assigned Deputy Attorney General James Dannenberg to the case involving OHA's suit against the state. He replaces Deputy Andrew S.O. Lee, who filed the original motion challenging the constitutionality of the organization.

Dannenberg was quoted by UPI as saying he had not been directed by anyone to pursue the constitutionality question. "Courts will not reach for the constitutionality issue if they can dispose of a case on another issue, and this is also true of lawyers," he said.

That issue was included, he said, as part of a "boilerplate" list of defenses.

Dannenberg's assignment should not be seen as a criticism of Lee and is not a result of the controversy over the challenge to OHA, First Deputy Attorney General Michael Lilly said.

The Capitol rally was organized by OHA Trustee Walter Ritte but was not endorsed by OHA itself. Instead, Ritte said, it was an opportunity for Hawaiian activists and others to meet with Hawaiian kupuna (elders) about the challenge to OHA's constitutionality.

"Us young people are ready to charge," Ritte said, "but I'm not saying it's the right way."

The basic message from the kupuna who spoke yesterday was to avoid violence and seek to change the mind of the administration through prayer and persuasion.

Kupuna Lilia Hale, for instance, urged the group to pray and fast every day between 11 and noon on the subject. "We don't have a problem," she said, "we have a project."

Senator **Matsunaga**. Thank you very much.

Our next witness is Ms. Davianna McGregor-Alegado, of the Ethnic Studies Program of the University of Hawaii.

STATEMENT OF DAVIANNA McGREGOR-ALEGADO, ETHNIC STUDIES PROGRAM, UNIVERSITY OF HAWAII

Ms. **McGregor-Alegado**. Senator Matsunaga, Representative Akaka, friends, aloha kakau.

I'm an instructor of the Ethnic Studies Program at the University of Hawaii, and specialize in the history of the Hawaiian people. The testimony that I'm giving has been abbreviated, and the full testimony, written, will be submitted to your committee within a few weeks.

Senator **Matsunaga**. It will be in the record in full.

Ms. **McGregor-Alegado**. Thank you. Volume II accurately identifies the failure of volume I in its quote "selective and often misleading presentation of the background of events and forces leading to the overthrow of the Kingdom of Hawaii," end quote. And its failure to document the changing nature of American and U.S. involvement and interest in the kingdom; to consider the dynamics of European and American rivalries and actions in the kingdom; or to closely examine the shifts in the tone and direction of U.S. diplomatic and naval communications to kingdom agents, and how that was interpreted by Americans residing in Hawaii.

These are the areas that I would like to address in my presentation, focusing on the American interests internal to Hawaii. And on Friday, a presentation will be made by a diplomatic historian regarding the overall strategic economic and military interests of the United States in Hawaii.

Here I will merely outline contours of how American and European merchants, missionaries, bankers, and planters transformed Hawaii's economic and social system, redirected its development along capitalist lines and subsequently emerged as the dominant forces in the Hawaiian Islands with substantial vested interest to consolidate and protect.

These interests adopted different political policies and approaches at specific junctures in the economic development of Hawaii, which ultimately led to the incorporation of Hawaii into the United States, and the demise of the Hawaiian monarchy and the sovereignty of the Hawaiian people. Hawaii's political system and status developed and transformed as the needs of the multinational merchant-banker-missionary-planter elite in Hawaii expanded and placed new demands upon it. In this sense, multinational means the bankers and planters that came from different nations, Britian, Germany, and United States.

In the first period, during the initial stages of Hawaii's economic development, around the fur and sandalwood trades, a centralized government under one paramount chief best served the development of trade and commerce. The introduction of guns and ammunition and Western ships of war made it technologically feasible under the prasmatic leadership of Kamehameha that one paramount chief could emerge. And Hawaii followed a similar pattern that was established in Tahiti, Samoa, and Tonga, for interaction with trade and commerce with Europeans and Americans.

During the second period, commerical development during the waiting period made the accumulation of investment capital possible, and required security of private property. At that point, a constitutional monarchy run by American and European statesmen and a pliant Hawaiian monarchy best advanced the general interests of the individual competing American and European entrepreneurs.

At this point, the consensus was that American and British and German interests in Hawaii would best be served by a constitutional monarchy of an independent Hawaiian Kingdom. And many of these foreigners served as statements in the Hawaiian monarchy and Hawaiian Constitutional Government, and actively worked for negotiation of treaties which would recognize the independence of Hawaii, playing off the delicate balance of power between France, Britian, and the United States at that time. And this is in the period of 1840 through 1850. And in 1842 President Tyler issued the Tyler doctrine which declared American interest that Hawaii remain a neutral and independent government.

In the third period, the government of agribusiness organized around the sugar industry and dependent upon the U.S. market, necessitated the support of the planter interests around the plan of incorporating Hawaii into the United States. To carry out this incorporation of Hawaii into the United States, the Hawaiian monarchy, which had faithfully worked with and served these business interests, were betrayed. Hawaii's sovereignty was terminated. And Hawaii became a territory of the United States.

What is clear throughout this period is that there were always forces who sought annexation of United States into the United States, even as early as 1854. However, they did not wield a consensus among the planter interests of British, German, and American national organs. It was not until events in the 1880's that the consensus changed and the decision was made that an independent constitutional monarchy did not best serve the interests of planters and businessmen in Hawaii, and that it was necessary to seek the annexation of Hawaii into the United States.

I'll just summarize here.

It was at this point that American planter, missionary and business interests, with the cooperation of British and a few German planters, carried out the overthrow of the monarchy with the backing of the U.S. Government and its Marines through the American minister in Hawaii. And what is at stake at this time, in 1891, is provided by Lorrin Thurston himself in an obscure manuscript in the archieves, which is entitled, "The Leaders of the Revolution." And he shows that out of 24 men of the executive council and advisory council of the provisional government, 17 were of American parentage or birth, 5 were of British parentage or birth, and 2 were German. And the figures that he provides shows that they combined had an investment of $10.9 million in Hawaii.

At the time of 1891 and 1892, Americans and Europeans had—or earned 52 percent of the income in Hawaii and paid taxes, which indicates that they controlled an acreage of 57 percent of the land in Hawaii. And according to statistics submitted to the U.S. Congress in 1893, Americans controlled 30.5 percent of the unincorporated plantations, 76 percent of all the incorporated sugar plantations, and 59 percent of Hawaii's corporations other than sugar plantations. So that there was a lot of vested interest in Hawaii by American planters, bankers and businessmen, which made the incorporation into the United States of great importance.

A final point is that the historiography on the period is very clear—the U.S. Government participated in the overthrow of a duly established Hawaiian monarchy and history cannot be revoked to make what must be a political and ethical decision on the part of the U.S. Congress, to correct the historical injustices to the Hawaiian people.

Thank you.

Senator MATSUNAGA. Thank you very much. It's encouraging to know that the Ethnic Studies Program at the university has produced such a well-informed student.

Our next speaker will be Miss Billie Beamer.

Is Billie here? No? Well, then we'll go next to Ms. Adelaide DeSoto, better known as Frenchy.

STATEMENT OF ADELAIDE "FRENCHY" KEANUENUEOKALANINUIAMAMAU DeSOTO

Ms. DESOTO. Aloha, Mr. Chairman, Congressman Akaka, aloha.

Before I get into my testimony, I would just like to share with the chairman my family's great hope that you are well and Congressman Heftel is well.

Mahalo a nui loa a pau loa, for allowing me this opportunity to share with you my point of view relative to the Native Hawaiians Study Commission's report in volume I, and in the minority report reflected in volume II.

The analysis presented to you for consideration in volume I is laced with major deficiencies, as we have heard all morning, and is reflective of the attitudinal constraints of the majority of the commissioners—partial and biased, serving no purpose but to force a constrained perspective of its mandates and its stated objectives; in fact, skirting those self-imposed objectives whenever convenient by selective historical reporting, omissions and errors.

Volume I's report is fatally flawed and should not be taken seriously as an impartial analysis of a study of the culture, needs and concerns of the native Hawaiian. Should Congress choose to do so, it would in result cause irreparable harm to the already fragile existence of a conquered people.

I would like to recommend to you the reading of the Honorable Senator Daniel K. Inouye's letter to the Native Hawaiians Study Commission dated November 23, 1982. This letter in my opinion is reflective of the thousands of objections to the Native Hawaiians Study Commission's report in volume I.

My family and I are basically in support of the recommendations listed in volume II.

There is really no amount of money in the world that would be able to repair the damages done to my people by the U.S. Government and its involvement in the overthrow of my sovereign queen and benefactress, her Royal Highness Liliuokalani.

The United States must acknowledge its wrongdoing in the overthrow; only then will the Hawaii of today and tomorrow be freed from the Kaumaha of a conquered people and once again exemplify the true spirit of Aloha.

The issue of the blood quantum requirement imposed on our people by Congress still divides us. It rips our families apart and causes deep-seated roots of despair and in many instances, helplessness.

I am a native as defined in all of the definitions, but more especially in the Hawaiian Homestead Act, as amended. I presently reside on homestead land in Wai'anae and am very grateful for being there. However, I ache inside for future generations of Hawaiians who because of the blood quantum requirement will not be able to establish more permanent roots. I personally have experienced the frustration and despair in caring for my home and land with the total acknowledgment that I cannot plan for the future of my family succeeding to my homestead because they lack the blood quantum.

Since becoming a homesteader, each day it is a burden with the clouds of uncertainty looming over the horizon. When I work my garden of taro, bananas, eggplants, cabbage, papayas, radishes, and other things for family's subsistence, I am constantly aware of the fact that no matter how much of my essence I put into this land, should I expire, my entire family would be cast out from this place. It causes me great pain.

I am not the only homesteader who feels this way in Wai'anae; in the new increment, many of my neighbors exist with basically the same fears.

I would urge you, Mr. Chairman, to convince your colleagues to dispense through legislation with the existing blood quantum requirement for successorship to the Hawaiian Homes Program. Our State legislature recognized the many and severe problems of the homesteader imposed by the blood quantum requirement and adopted a resolution to lower the blood quantum to 25 percent for successorship, but has failed to vigorously seek that same solution in Congress.

We as a people should be repulsed at the years and years of subtle and sometimes not too subtle attempts by people with all good intentions to undermine our cultural and traditional values—in this particular instance, the values of family, immediate and extended Ohana. The blood quantum requirement does just this.

I would like to borrow an excerpt from volume II of the Native Hawaiians Study Commission, and I quote:

> * * * This qualification (the fifty percent blood quantum) has proved to be a factor in dividing the Hawaiian community; mothers and fathers from their children, cousins from cousins, and friends from friends * * *.

I urge you to do everything in your power to help us to reduce the blood quantum requirement in accordance with the resolution as adopted by the State of Hawaii Legislature.

In offering solutions to be considered by the Congress and other Americans, I offer the idea that restitution can be perceived in many forms, it need not in of itself be limited to taxpayers' money. In Hawaii, we Hawaiians have many resources that are controlled by others. We need not go-a-beggin' to the Congress for Band-Aid programs and short-term solutions. Give to the Hawaiian people that which was stolen, their land, from which their economic stability can be realized; and then there shall be no need to continually feed at the public trough. This would also help in trimming the very popular Federal deficit.

I look forward to the time when I am able to sit with my 14 grandchildren and tell them that America is just a righteous, and they should always live and serve justice, and that the aboriginal people of the land of Hawaii are not or were not the sacrificial victims for a nation's well-being.

Please help me to realize this dream.

Thank you, Mahalo, for allowing me this time to share with you my mana'o 'io [deepest thoughts]. Mahalo.

Senator MATSUNAGA. Thank you very much, Frenchy, for those moving words.

We will now call upon the Office of Hawaiian Affairs. I believe they have a panel. If you will all come forward and then state your names.

Mr. KEALOHA. Just the chairman, sir.

Senator MATSUNAGA. We have just the chairman, I see.

STATEMENT OF JOSEPH G. KEALOHA, JR., CHAIRMAN, BOARD OF TRUSTEES, OFFICE OF HAWAIIAN AFFAIRS

Mr. KEALOHA. The committee should have copies of our detailed testimony, which I will summarize this afternoon.

The OHA Board of Trustees believe that the findings and conclusions reached by the majority of the Native Hawaiians Study Commission, volume I of the report, are neither accurate nor objective assessments of the U.S. role in the 1893 overthrow of the Hawaiian Kingdom. we strongly urge this committee to reject volume I of the report, and to adopt the findings and recommendations contained in volume II.

We have adopted five resolutions which are attached to our testimony supporting these recommendations.

One, overthrow of the Hawaiian Kingdom in 1893.

The first and perhaps most critical area of disagreement between volumes I and II involved the U.S. participation in the overthrow of the Hawaiian Monarchy. Volume I concludes that the United States bears no legal or moral responsibility for the actions of its officials at that time. The majority of the Commissioners, therefore, determine that native Hawaiians have no claim to compensation either for loss of sovereignty.

However, a careful examination of the historical record on the overthrow provides sufficient reason to suggest that:

One, the United States through its respresentatives in the State and Navy Departments, encouraged and supported the rebellion;

Two, the involvement of the U.S. Minister John Stevens, who ordered the landing and placement of American marines to intimidate the Queen of Hawaii, was crucial to the success of the rebellion.

Three, without such armed support, the insurgents would have failed for a lack of popular support and insufficient arms.

Four, such action violated international law, treaties with the Kingdom of Hawaii, and was characterized by President Cleveland in 1893 as an illegal and immoral act of war against a feeble and trusting nation.

Five, because of these acts, the Queen had to yield her authority to the United States through Minister Stevens, who did not forward her plea for review by the United States, recognized a provisional government composed of leaders of the insurrection, and declared an American protectorate over the islands.

Six, American troops occupied government buildings 2 weeks later, because the provisional government was afraid of losing control.

Seven, these actions culminated in the taking of crown and government lands from the Kingdom of Hawaii by the subsequent Republic of Hawaii.

Eight, these ancestral rights and lands were ultimately ceded to the U.S. Government by a government whose existence was dependent upon the actions and agent of the United States.

Nine, this transfer occurred without the consent of the native Hawaiian people, without compensation or the protection of their interests.

In view of these facts, we disagree with the majority of the Commission members. We believe that the overthrow of the Hawaiian Kingdom would have failed without the active participation of the U.S. agents and forces. The United States should be held responsible for the actions of its representatives, and has an ethical and moral, if not a legal responsibility to correct this injustice by providing proper compensation to the native Hawaiian people for the loss of their land and sovereignty.

NO. 2: NATIVE HAWAIIAN TRUSTS

Currently, there are two public programs to assist native Hawaiians—Hawaiian Homestead Act and the Office of Hawaiian Affairs. The Hawaiian Homes Commission was created by the Congress in 1920, and became a trust when its management was transferred to the State of Hawaii as a condition of statehood, pursuant to the 1959 Admission Act. Similarly, the legal basis for OHA as a trust for native Hawaiians is predicated on section 5(f) of the Admission Act.

HAWAIIAN HOMES TRUST

The purpose of the Hawaiian Homestead Act is to rehabilitate native Hawaiians, those with at least 50 percent Hawaiian blood, through a return to the land. Under the terms of the act, over 200,000 acres were set aside for homesteading, ranching and farming. In the 63 years since program inception, many inequities and problems have surfaced, such as illegal transfers of lands to nonbeneficiaries, widespread use of Hawaiian homes for other Government programs, and lack of sufficient funding for program implementation.

In July, 1982, the U.S. Secretary of the Interior and the Governor of the State of Hawaii established a joint Federal-State Task Force on the Hawaiian Homes Commission Act in response to allegations of mismanagement and trust violations of the Hawaiian Homes Program.

In August 1983, the task force released its report, which contained 134 recommendations. The Federal Government has been silent about its trust responsibility for the Hawaiian Homes Program. We would like to see the Federal Government take a more active role in the affairs of the Hawaiian Homes Program.

We therefore urge the Congress to monitor the implementation of the Federal-State Task Force recommendations by the State of Hawaii and the U.S. Department of the Interior, and to take appropriate legal action for breach of trust if satisfactory compliance has not occurred within a reasonable period of time.

Ceded Land Trust:

In 1898, 5 years after the overthrow, the Republic of Hawaii ceded sovereignty of the Islands to the United States and title to 1,750,000 acres of public lands, as well. In 1900, the Organic Act established Hawaii's territorial government, confirming the cession of Hawaii's public lands to the United States, and provided laws governing the administration of these lands.

Although the Republic of Hawaii ceded absolute title of public lands to the United States, both the Joint Resolution of Annexation and the Organic Act recognized the trust status of these lands under the Federal Government. Hawaii's ceded lands therefore became part of the Federal public domain. Beneficial title remained with the inhabitants of Hawaii.

When Hawaii became a State in 1959, the special status of Hawaii's public lands continued to be recognized, and the Admission Act clarified the intent to return those lands to Hawaii. Under section 5 of the act, the United States relinquished most of the ceded lands to the State, which in turn was required under section 5(f) to hold ceded lands and their income as public trust for five purposes, including the betterment of conditions for native Hawaiians.

The United States, however, retained an interest in over 400,000 acres of ceded lands. Section 5(e) of the Admission Act gave the United States 5 years to determine the future status of these lands. Before the 5-year period lapsed, however, Congress passed Public Law 88-233, amending section 5(e) and mandating the U.S. convey to the State all ceded lands when such lands are determined to be surplus by the GSA. These lands would be incorporated into the public land trust established under section 5(f).

State officials had high hopes for the return of substantial portions of Federal-held lands. Since 1959, however, less than 600 acres have been returned to the State of Hawaii.

Other overviews and part of the resolutions, before I summarize, is that we would like to of course, have native Hawaiians be registered on the native American programs as we testifed 3 weeks ago in Washington. And I'll go on further, there's a speaker before me, a former chairperson, as eloquently outlined, the problem that faces the blood quantum—OHA is advocating that single quantum be defined.

In summary, I hope this committee will pursue the recommendations as I had stated and on behalf of the trustees and for all who would like to thank this committee for allowing this time to make this presentation.

Mahalo.

[This prepared statement of Mr. Kealoh follows:]

OFFICE OF HAWAIIAN AFFAIRS
TESTIMONY BEFORE THE U. S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON THE REPORT OF THE NATIVE HAWAIIAN STUDY COMMISSION
APRIL 16, 1984

Senator Matsunaga and Members of the U. S. Senate Committee On Energy and Natural Resources. Aloha Kakou. My name is Joseph G. Kealoha, Jr., Chairman of the Board of Trustees, Office of Hawaiian Affairs. I am here today on behalf of OHA to provide testimony on Volumes I and II of the Report of the Native Hawaiian Study Commission. It is the position of the OHA Board of Trustees that the findings and conclusions reached by the majority of the Commission's membership in Volume I of the Report are inaccurate and do not represent an objective assessment of the United States government's role in the overthrow of the Hawaiian Kingdom in 1893. We therefore strongly urge this Committee to reject Volume I of the Report and to adopt the findings and recommendations contained in Volume II.

As a preface to my remarks today and as a means of providing the members of the Committee with some understanding of the role and interest of the Office of Hawaiian Affairs (OHA) in this matter, I would like to begin by taking this opportunity to briefly share with you a little about the background of the Office of Hawaiian Affairs.

This Office was established in 1978 by amendment to the Hawaii State Constitution. Following ratification of the constitutional amendments by Hawaii's voters and the enactment of authorizing legislation by the Hawaii State Legislature, the first OHA election of its Board of Trustees was held in November 1980. The Office of Hawaiian Affairs is governed by an elected nine-member Board of Trustees. The trustees must be Hawaiian and are elected by eligible voters who must also be of Hawaiian ancestry. As a result, the OHA trustees are directly accountable to their beneficiaries, the Hawaiian people.

The primary purpose for which the Office of Hawaiian Affairs was established is to work for the betterment of conditions of all Hawaiians. OHA is the principal public agency in the state responsible for the performance, development and coordination of all programs and activities impacting on Hawaiians.

Another important purpose of the Office is to serve as a receptacle for any reparations forthcoming to the Hawaiian people. OHA therefore has a direct interest in the conclusions and recommendations of the Native Hawaiian Study Commission and in the deliberations of this Committee on this subject. We have closely monitored and actively supported the work of the Commission since its creation in 1981. As an indication of the extent to which OHA has been involved in the activities of the Commission, we organized a series of community forums throughout the state to inform the community of the purpose of the Commission prior to their scheduled hearings in 1982, provided funding for research into the historical events and legal issues surrounding the overthrow of the monarchy; testified at the various hearings held by the Commission throughout the state; and most recently, provided a grant to the Kaulana Na Pua Institute to assist them in conducting additional research in preparation for these congressional hearings.

As I stated at the outset, we believe that Volume I of the NHSC Report reaches a number of erroneous conclusions which were based on inaccurate and/or incomplete analysis. Volume II, prepared by Hawaii's minority members on the Commission, is an attempt to refute these inaccuracies and misinterpretations. OHA is in full accord with the conclusions and recommendations presented in Volume II, and we have adopted five Resolutions supporting the recommendations in this volume. Copies of these Resolutions are attached to our testimony for your review and consideration.

I. Overthrow of the Hawaiian Kingdom in 1893

The first and perhaps most critical area of disagreement between Volumes I and II relates to the nature and degree of the United States' participation in the overthrow of the Hawaiian monarchy in 1893. Volume I concludes that the United States bears no legal or moral responsibility or culpability for the actions of American officials at that time. It further concludes that despite this rejection of legal or ethical accountability by the United States, native Hawaiians were not deprived of any compensable interest represented by the Kingdom of Hawai'i. As a result of these conclusions, the majority of the Commissions members determined that there was no basis for native Hawaiians to receive compensation either for loss of land or loss of sovereignty.

However, a careful and objective examination of the historical record of the events surrounding the 1893 overthrow provides sufficient reason to suggest the following:

1. That the United States, through its representatives in the State and Navy Departments, did encourage and actively support the rebellion against the legitimate government of the Kingdom of Hawaii;
2. That the involvement of U. S. Minister John L. Stevens, whose refusal to remain neutral in the domestic affairs of the Kingdom, but instead to become an active agent in supporting the

insurrection by ordering the landing and placement of American marines in a manner and position unmistakably intended to intimidate the Queen of Hawai'i and her government, was crucial to the success of the rebellion;

3. That without such armed support, the insurgence would have failed for a lack of popular support and insufficient arms;
4. That such action by the American Minister Stevens and a contingent of U. S. Marines was a breach of international law, of treaties with the Kingdom of Hawai'i, and was characterized by President Cleveland in his "Executive Message to Congress" in December 1893 as an illegal and immoral act of war against a feeble and trusting nation;
5. That because of these actions by agents and forces of the United States, the Queen had no choice but to yield her authority and that of her government to the United States through Minister Stevens, who did not forward her plea for review by the United States but acted to recognize a provisional government composed of leaders of the insurrection and to declare an American protectorate over the Islands;
6. That these actions were augmented two weeks later, at the request of the provisional government from a fear of being unable to maintain control, with the occupation of all government buildings by American troops;
7. That these actions culminated in the assertion of control by the subsequent Republic of Hawai'i over the crown, government, and public lands of the Kingdom of Hawai'i; lands and sovereignty which represented the traditional and ancestral land rights and title of the native Hawaiian people;

8. That these ancestral rights and lands were ultimately ceded to the United States by a government whose existance was dependent upon the actions and agents of the United States; and
9. That this transfer occurred without the consent of the native Hawaiian people, without compensation for their interests, and without any explicit protection of their interests;

In view of these facts, we find it extremely difficult to understand how the majority of the Commission's members could reach a conclusion that the United States government bears no responsibility for the actions of its agents and that therefore, there is no legal or moral basis for providing any compensation to the native Hawaiian people for either the loss of land or sovereignty.

As I am confident testimony by other legal experts and historians here today will demonstrate, the basic, undeniable fact remains that the overthrow of the Hawaiian Kingdom in 1893 would not have succeeded without the active support and participation of United States agents and forces. Whether officially sanctioned or not, the United States cannot deny responsibility for the actions of its representatives. The United States has an ethical and moral, if not a legal responsibility to correct this injustice by providing proper compensation to the native Hawaiian people for the loss of their land and sovereignty.

II. Native Hawaiian Trusts

Currently, there are two state programs which are intended to affirmatively assist native Hawaiians in our contemporary society. These two programs are the Hawaiian Homes Commission Act (HHCA) and the Office of Hawaiian Affairs (OHA). The Hawaiian Homes Commission Act was created by the Congress in 1920, and assumed the status of a trust when the responsibility for its management was transferred to the State of Hawai'i as a condition of statehood, pursuant to the Admission Act in 1959. Similarly, the legal basis for OHA as a second trust for native Hawaiians is predicated on Section 5(f) of the Admission Act, which created a trust of all revenue and income derived from the sale, lease or other disposition of ceded lands, to be used for one or more of five purposes, including the betterment of conditions of native Hawaiians.

From this standpoint, it is clear that the responsibility and genesis for the establishment of both trusts was founded through congressional action. Therefore, the following comments underscore the need for greater scrutiny by the Congress in ascertaining whether the Ceded Land Trust created pursuant to Section 5(f) of the Admission Act and the Hawaiian Homes Commission Act are in compliance with Congressional intent and trust conditions.

A. Ceded Land Trust

In 1898, five years after the overthrow of the Hawaiian Kingdom, the Republic of Hawai'i ceded sovereignty of the islands to the United states under the terms of the Joint Resolution of Annexation. With the cession of sovereignty, the Republic also conveyed absolute title of Hawaii's public lands to the United States. These lands, formerly the Crown and Government lands under the monarchy, amounted to over 1,750,000 acres. In 1900 the Congress passed the Organic Act, establishing Hawaii's territorial government, confirming the the cession of Hawaii's public lands to the U. S., and providing specific laws governing the administration of those lands.

Although the Republic of Hawaii had ceded absolute title of the Crown and Government lands to the United States, both the Joint Resolution of

Annexation and the Organic Act recognized that these lands were impressed with a special trust under the federal government's proprietorship. It has in fact been argued that Hawaii's ceded lands never became an integral part of the federal public domain. Due to their unique status, the U. S. received legal title to these lands, but beneficial title rested with the inhabitants of Hawai'i. The territorial government had in effect become a conduit of Congress.

One of the major reasons behind congressional support for Hawaii's annexation was its value as a strategic defense location. There were many who felt that Hawaii was needed to protect the West coast of the United States and to maintain U. S. military strength in the Pacific. As a result, the federal government made extensive use of Hawaii's public lands for military and other purposes. In the sixty years between Hawaii's annexation and entry into statehood, the federal government, through a series of executive orders and presidential proclamations, "set aside" over 287,000 acres of public lands for military and park use. In addition, the federal government had permits and licenses for an additional 117,412 acres.

Hawai'i was admitted to the union as a state in 1959. The special status of Hawaii's public lands continued to be recognized, and the intent to return those lands to Hawai'i was made clear in the Admission Act. Under Section 5 of the Act, the federal government relinquished title to most of the ceded lands held at the time of statehood. Section 5(f) required that the State hold all ceded lands returned by the federal government, as well as all proceeds and income derived from these lands, as a public trust for five purposes, including the betterment of conditions of native Hawaiians.

The federal government, however, retained an interest in over 400,000 acres of lands identified as ceded lands. The original provisions of the Admission Act, pursuant to Section 5(e), allowed the federal government five years to decide on the future status of these lands. Prior to the expiration of this five year period, the U. S. Congress passed Public Law 88-233, amending Section 5(e), and mandating the U. S. Government to convey to the State of Hawai'i all ceded lands under its control when such lands are determined to be surplus property by the GSA. All such surplus property would be incorporated into the public land trust established under Section 5(f).

Since Section 5(e) and P. L. 88-233 provided a mechanism for conveying federally held ceded lands back to the control of Hawaii, State officials had high hopes for the return of substantial portions of federal land. However, since 1959 less than 600 acres has been returned to the State of Hawaii.

In 1978, delegates to Hawaii's constitutional convention adopted several amendments aimed at implementing the trust provisions established under Section 5 of the Admission Act. The first of these amendments reaffirmed that all income and proceeds derived from the public land trust would be used for two classes of beneficiaries, the general public and native Hawaiians as defined in the Hawaiian Homes Commission Act. A second amendment created the Office of Hawaiian Affairs, and a third provided that OHA receive a pro rata share of the proceeds from the public land trust, to be used for the betterment of conditions of native Hawaiians. The Hawai'i State Legislature subsequently determined that OHA should receive twenty percent of the revenue from the public land trust.

The Office of Hawaiian Affairs and its native Hawaiian beneficiaries, therefore, have a direct interest in how Hawaii's ceded lands are managed; and in insuring that all federally held ceded lands which are determined to be surplus are returned to the State of Hawai'i. As I mentioned previously, the federal government continues to control substantial portions of Hawaii's ceded lands.

There has been a recent instance where a parcel of ceded land at Fort Armstrong was returned to the State with conditional use requirements attached. The subject parcel was transferred to the State of Hawai'i under the Omnibus Budget and Reconciliation Act, P. L. 97-35. The transfer required the State to use the land and improvements for a particular use, and in the event that such use should change, the parcel would revert back to the federal government. P. L. 88-233 sets forth the return of ceded lands to the State of Hawai'i in fee absolute and without conditions or reversionary interest remaining to the federal government. This is a clear violation of P. L. 88-233 which mandates conveyance to the State in fee.

The current situation at Fort DeRussey provides another example of ceded land status being entangled in federal fee dispositions. A portion of Fort DeRussey is ceded and is thus subject to the provisions of P. L. 88-233. This parcel, which is strategically located along the entire ocean frontage of Fort DeRussey, should therefore be conveyed to the State in fee upon its surplus declaration. It cannot be sold or transferred to anyone except the State of Hawai'i.

The Office of Hawaiian Affairs therefore recommends that the Congress establish a Joint Federal-State Ceded Lands Commission to study the problems associated with federally controlled ceded lands.

B. Hawaiian Homes Trust

A second federal trust involving native Hawaiians was established when the Hawaiian Homes Commission Act of 1920 was enacted by the U. S. Congress. The stated purpose of the Act was to rehabilitate the native Hawaiian race through a return to the land. Under the terms of the Act, over 200,000 acres of "available land" was set aside for homesteading, ranching, and/or farming purposes. Eligibility for the program was limited to native Hawaiians with at least 50% quantum of Hawaiian blood. The Act also provided that only the Congress could alter or amend the beneficiary class or benefits of the program, and that all non-beneficiary transfers of the Hawaiian Home Lands were subject to the approval of the Secretary of the U. S. Department of Interior; provided, however, that such lands were exchanged and not lost by such transfers.

Prior to statehood, the Hawaiian Homes Commission Act was implemented and administered by the Territorial government through the Hawaiian Homes Commission. In 1959 the HHCA was incorporated into the Hawaii State Constitution as a provision of the compact between the United States and Hawai'i in the Admission Act. The Department of Hawaiian Home Lands was established and title to all Hawaiian Home Lands was transferred to the State of Hawai'i. The compact and transfer of title also explicitly retained the power of the Congress to exercise its prerogatives and obligations as outlined in the Hawaiian Homes Commission Act.

In the sixty-three years since the act was first passed, many inequities and problems have surfaced, such as illegal transfers of lands to non-beneficiaries, the widespread use of Hawaiian Home lands for other government programs, and the lack of sufficient funding for program implementation. For example, a series of 33 Executive Orders and

Proclamations by Territorial and State Governors have transferred over 30,000 acres of Hawaiian Home land from the DHHL's jurisdiction to other agencies, departments or individuals, without fair compensation for their use or a mandated exchange of lands. Moreover, less than 3,500 awards and less than 15% (less than 30,000 acres) of the land is in the hands of native Hawaiians, while over 65% of the DHHL land inventory is currently leased to non-native Hawaiians as a means of generating income for its administration. The State Constitution requires the Legislature to fund the programs administrative and operating costs.

In July, 1982 the U. S. Secretary of Interior and the Governor of the State of Hawaii established a joint Federal-State Task Force on the Hawaiian Homes Commission Act in response to allegations of mismanagement and trust violations involving the administration of the Hawaiian Homes Program. The Office of Hawaiian Affairs was instrumental in the establishment of the Task Force, and was also responsible for underwriting the administrative costs of the Task Force's efforts. An OHA Trustee also served as a member of the Task Force.

In August 1983 The task Force released its report of findings and recommendations relative to the implementation and management of the Hawaiian Homes Commission Act. The report contained a total of 134 recommendations for consideration by the secretary of Interior and the Governor of the State of Hawaii.

At this time, OHA is extremely interested in the implementation of the Task Force recommendations. The recommendations were very specific, but without proper enforcement and monitoring by the federal government, the recommendations have very little teeth. Of prime concern is the 30,000 acres set aside for use by the State of Hawaii without due compensation to the Hawaiian Homes Program.

The Department of Hawaiian Home Lands has developed an ambitious plan for complying with the task force recommendations; however, it lacks a sound timetable and is silent as to its sources of funding to undertake its proposed projects.

The federal government has also been silent regarding its role as it relates to federal trust responsibility for the Hawaiian Homes Program. We would like to see the federal government take a more active role in monitoring the implementation of the program and in taking appropriate action to correct deficiencies and enforce the trust provisions of the Act.

The Federal-State Task Force on the Hawaiian Homes Program has done a good job of identifying the problems and abuses of the program, and in developing sound recommendations to address the concerns identified. However, the active support and participation of the federal government is critical if these recommendations are to be implemented.

We therefore urge the Congress to indicate, by joint resolution, their commitment to review the implementation of the Federal-State Task Force recommendations by the State of Hawaii and the U. S. Department of Interior, and to take appropriate legal action for breach of trust if satisfactory compliance has not occurred within a reasonable period of time.

IV. NATIVE HAWAIIANS AS NATIVE AMERICANS

As a result of their loss of sovereignty, disenfranchisement from their land, and domination by a foreign culture, the Hawaiian people have suffered severe social, economic and cultural problems. Although programs such as the Hawaiian Homes Commission Act and Public Land Trust have been established to assist Hawaiians, these programs cannot and have not addressed the myriad and complex problems which still persist.

Both volumes of the NHSC Report indicate that Hawaiians suffer significantly higher unemployment than other residents of the State; higher rates of poverty and incarceration; the highest infant mortality; the lowest life expectancy; the highest incidence of cancer; higher rates of respiratory conditions, such as asthma; higher rates of personality disorders and mental retardation; and higher suicide rates and incidences of alcoholism. The Native Hawaiian Education Assessment Project (NHEAP) Report, authorized by Congress and recently completed, finds that Hawaiians have the highest rate of academic and behavioral problems in schools; lower academic achievement; higher participation rates in social welfare programs; lower rates of enrollment in institutions of higher learning; and higher rates of truancy and dropouts than other ethnic groups in the State.

Federal assistance to Hawaiians has been piecemeal and sporadic. We believe that Congress can improve this approach and help Hawaiians deal with their problems comprehensively by allowing equal access to federal programs available to other Native Americans, such as the Indians. According to research conducted by the Congressional Research Service there are only a handful of statutes that specifically refer to "Native Hawaiians."

On the other hand, there are numerous programs specifically for Indians, including those for vocational training, health care improvement, self-determination and education. Many of these programs would be equally valuable to Hawaiians. For example, among the findings of the NHEAP Report is that Hawaiian and Indian children experience similar problems. Therefore, one of the recommendations of the report is to implement tutoring, counseling and cultural studies similar to those conducted under the Indian Education Act.

OHA urges Congress to include Native Hawaiians in the definition of Native American for the purpose of allowing eligibility in all programs affected by such definition. We further urge Congress to earmark funds specifically for Hawaiians within these Native American programs. Equal access to federal programs will greatly increase the resources available to address the needs of Hawaiians.

V. THE BLOOD QUANTUM

In our testimony today, we have discussed the issues surrounding the overthrow of the Hawaiian Kingdom, the Ceded Land Trust, the Hawaiian Homes Commission Act, and the need to include native Hawaiians in all federal programs available to other native Americans. The final concern I would like to discuss relates to all of these previous issues. It is a concern which touches every person in the Hawaiian community, and that has divided friends and family. I'm referring to the definition of native Hawaiian, or as it is often called, the "blood quantum".

The U. S. Congress first enacted the definition of native Hawaiian for the purposes of the Hawaiian Homes Commission Act in 1920. This definition stated that a native Hawaiian is any descendant who is at least one half blood of the races inhabiting the Hawaiian Islands previous to 1778. Our research has found that during the passage of the Hawaiian Homes Commission Act, Jonah Kuhio Kalanianaole, Hawaii's Delegate to Congress strongly pursued the notion that the definition of native Hawaiian should extend to those Hawaiians with one thirty-second Hawaiian blood. However, at the time, there was a strong lobbying effort which included the Hawaii Sugar Planters Association who advocated that the definition of native Hawaiian should be limited only to those who were pure Hawaiian. Kuhio objected to this proposition because he knew that this definition would effect only three hundred families. He strongly believed that the Hawaiian Homes Program should extend to all Hawaiian families, including those of one thirty-second blood quantum. In response to a letter from Kuhio on this issue, Senator H. Kew, Chairman of the Committee on Territories stated that, "As an experiment it might prove a success but as a measure for national relief it cannot accomplish much." In retrospect, the record has shown that the fifty percent blood quantum which was ultimately adopted by the Congress came about as a result of a political compromise which clearly fell short of Kuhio's desire and the wishes of the Hawaiian people. Therefore, we can only conclude that the primary concern of the Congress was not the success of the Hawaiian Homes Program, but rather to appease the national conscience.

Today Hawaiians are experiencing the same problem which Kuhio forsaw over sixty years ago. The State Health Surveillance Program estimates that approximately one fourth of the Hawaiian population, roughly 45,000 people, are half Hawaiian, and the remainder of the Hawaiian population, approximately 130,000 people, are less than half Hawaiian. Further, only 26,000 acres, less than 15% of the Hawaiian Home Lands inventory has been distributed to native Hawaiians. From this as well as numerous meetings in the Hawaiian community over the past several years, I can only conclude that the divisive effect of the blood quantum requirement has reached a point whereby Hawaiians as a divided people have not been able to assert what is rightfully entitled to them. Since the blood quantum restriction also applies to proceeds of the ceded land trust fund established by Section 5(f) of the Admission Act and administered by the Office of Hawaiian Affairs, OHA finds itself confronted with the task of trying to unify and address the needs of our beneficiaries with resources that were intended to divide us as a people.

Further, Congress in 1974 amended the Native American Programs Act to include native Hawaiians as Native Americans, and in so doing enacted a second definition that does not require a specific blood quantum. This same definition was also adopted by the Congress in legislation relating to the Koloko-Honokohau National Park and the Native American Religious Freedom Act.

In addition, the Hawaii State Legislature enacted legislation in 1983 to amend the definition of native Hawaiian to one fourth blood quantum for successors to a Hawaiian Homes lease. This proposed legislation has been transmitted to Congress for its consent, and could lead to the prospect of a third definition of native Hawaiian for the purpose of entitlements.

The Office of Hawaiian Affairs recognizes the blood quantum issue as a root concern that has had a divisive effect on Hawaiian families and the Hawaiian community. We further recognize that self-determination is a desirable goal of Hawaiians that would be substantially achieved if ratification by Hawaiians was incorporated into any Congressional action seeking to resolve the issue of the blood quantum.

OHA therefore strongly urges the Congress to give full consideration to the recommendation of the Native Hawaiian Study Commission Report Volume II, which recommends that the Congress adopt a single definition of native Hawaiian without reference to a blood quantum, and that proper guarantees to protect the rights and privileges of those now holding or awaiting a Hawaiian Homes award accompany this change.

VI. CONCLUSION

I would like to close my testimony today by briefly reemphasizing the major recommendations which the Office of Hawaiian Affairs has presented, and which I hope this Committee will give favorable consideration to supporting. Generally, we urge this Committee to reject the recommendations and conclusions contained in Volume I of the Native Hawaiian Study Commission Report, and adopt Volume II. Specifically, OHA recommends the following:

1. That the Congress acknowledge the illegal and immoral actions of the United States in the overthrow of the Hawaiian Kingdom and indicate its commitment to grant restitution for the losses and damages suffered by native Hawaiians as a result of those wrongful actions.
2. That the Congress establish a joint Federal-State Ceded Lands Commission to review the problems associated with federally controlled ceded lands.
3. That the Congress indicate, by joint resolution, its commitment to review the implementation of the recommendations of the Federal-State Task Force on the Hawaiian Homes Commission Act by the State of Hawai'i and U. S. Department of the Interior, and take appropriate legal action for breach of trust if satisfactory compliance has not occurred within a reasonable period of time.
4. That the Congress take appropriate action to include native Hawaiians in the definition of native American and extend to native Hawaiians eligibility in all programs affected by such definition without prejudice.
5. That the Congress establish a single definition of native Hawaiian without reference to a blood quantum, and provide appropriate protections to guarantee the rights and privileges of current Hawaiian Homes beneficiaries.

The Office of Hawaiian Affairs would like to express its appreciation to this Committee for allowing us the opportunity to provide testimony on this most important matter.

OHA 83-15

A RESOLUTION

URGING CONGRESS TO ESTABLISH A SINGLE DEFINITION OF NATIVE HAWAIIAN WITHOUT REFERENCE TO A BLOOD QUANTUM, AND TO PROVIDE APPROPRIATE PROTECTIONS TO GUARANTEE THE RIGHTS AND PRIVILEGES OF CURRENT HAWAIIAN HOMES BENEFICIARIES

WHEREAS, the U.S. Congress has established two definitions of a Native Hawaiian, one setting a blood quantum of 50% or more for purposes of the Hawaiian Homes Act of 1920, and the other only requiring an individual to be a descendant of those inhabiting the Hawaiian Islands prior to 1778; and

WHEREAS, it is a vital concern to the Native Hawaiian community that a single definition be adopted which encourages and enhances the dignity and values of a single, unified people; and

WHEREAS, the blood quantum definition (in the words of a 1980 State Legislative Report) has "proved to be a factor in dividing the Hawaiian community, mothers and fathers from their children, cousins from cousins, and friends from friends; and

WHEREAS, the United States Congress pursuant to the Hawaiian Homes Commission Act, defined a native Hawaiian to be any descendant of not less than one-half of the blood of the races inhabiting the Hawaiian Islands previous to 1778; and

WHEREAS, Congressional records reflect that in 1920 Hawaii's Delegate to Congress, Jonah Kuhio who is most notably characterized as the "Father of the Hawaiian Homes Commission Act", advocated that there be no blood quantum but that if one were required, that the definition of native Hawaiian should be based on one-thirty second blood quantum reflective of the wide-spread intermarriage among native Hawaiians and other peoples of the Hawaiian Islands; and

WHEREAS, this definition of native Hawaiian was incorporated by reference in the Admission Act of the State of Hawaii in 1959, as a qualification for benefits from

Section 5(f) of the Admission Act, as provided by State law; and

WHEREAS, the Office of Hawaian Affairs was created in 1978 as a trust for all Hawaiians and authorized, pursuant to the Constitution of the State of Hawaii Article XII Sections 5 and 6, to manage that pro rata share of income designated for native Hawaiians pursuant to Section 4 of said Article and Section 5(f) of the Admission Act; and

WHEREAS, the Office of Hawaiian Affairs has encountered major fiscal and administrative hardships in managing income for two classes of Hawaiian people based on native Hawaiian definitions enacted by Congress; and

WHEREAS, Congress in 1974 amended the Native American Program Act to include native Hawaiians as native Americans and in so doing enacted a second definition of native Hawaiian that does not require a specific blood quantum, but merely a showing of Hawaiian ancestry to those native people inhabiting the Hawaiian Islands prior to 1778; and

WHEREAS, the State Department of Health in 1981 estimated the native Hawaiian population to be 4[illegible],466 as compared to 129,322 for those Hawaiians who are less than 1/2 blood; and

WHEREAS, the State of Hawaii has transmitted to Congress proposed legislation to amend the definition of native Hawaiian to 1/4 blood quantum for successors to a Hawaiian Homes Lease, which could lead to the prospect of a third definition for the purposes entitlement; and

WHEREAS, the Office of Hawaiian Affairs recognizes the blood quantum issue as a root concern that has had a devisive affect on Hawaiian families and Hawaiian communities; and

WHEREAS, the Office of Hawaiian Affairs recognizes that self-determination is a desirable goal of Hawaiians and would be substantially achieved if ratification by Hawaiians were incorporated into any Congressional action seeking to resolve the issue of the blood quantum;

WHEREAS, Congress has reserved the power of consent to any amendments to the definition of native Hawaiian pursuant to Admission Act Section 4;

BE IT RESOLVED that the Office of Hawaiian Affairs Board of Trustees urges Congress to give full consideration to the recommendation of the Native Hawaiian Study Commission Report Volume II which recommends that Congress of the United States adopt a single definition of Native Hawaiian to mean any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778. And that proper guarantees to protect the rights and privileges of those now holding or awaiting a Hawaiian Homes award accompany this change.

Joseph G. Kealoha, Jr.
Joseph G. Kealoha, Jr.,
Chairperson

Rodney K. Burgess III
Rodney K. Burgess, III,
Vice-Chairperson

Hayden F. Burgess, Trustee

Piilani C. Desha
Piilani C. Desha, Trustee

Rockne Freitas
Rockne C. Freitas, Trustee

Thomas Kaulukukui Sr
Thomas K. Kaulukukui, Sr.,
Trustee

Moses K Keale Sr
Moses K. Keale, Sr., Trustee

Gard Kealoha
Gard Kealoha, Trustee

Walter L. Ritte
Walter L. Ritte, Trustee

Adopted: November 4, 1983
Date

OHA 83-16

A RESOLUTION

URGING THE CONGRESS OF THE UNITED STATES TO ACKNOWLEDGE THE ILLEGAL AND IMMORAL ACTIONS OF THE UNITED STATES IN THE OVERTHROW OF THE KINGDOM OF HAWAII IN 1893, AND TO INDICATE ITS COMMITMENT TO GRANT RESTITUTIONS FOR THE LOSSES AND DAMAGES SUFFERED BY NATIVE HAWAIIANS AS A RESULT OF THOSE WRONGFUL ACTIONS

WHEREAS, the State of Hawaii and all of her people proudly share, endorse, and encourage American ideals and principles of justice through law, and profoundly believe that an unresolved injustice to one is a harm endured by all; and

WHEREAS, such a harm to Native Hawaiians has occurred without redress or remedy; and

WHEREAS, Native Hawaiians have been included and identified as Native Americans in recognition of their unique and special relationship with the United States as an indigenous people; and

WHEREAS, as a result of the good conscience of the American people, speaking through the Congress, redress and remedy have been granted to other Native Americans for injustices and harm done them; and

WHEREAS, the Congress of the United States has indicated its interest in the pursuit of seeking resolution to possible claims by Native Hawaiians for the losses and damages which resulted from the overthrow of the legal government of the Kingdom of Hawaii in 1893; and

WHEREAS, the Congress enacted Public Law 96-565, Title III, and thereby established a Native Hawaiians Study Commission to advise the U.S. Senate Committee on Energy and Natural Resources and the U.S. House Committee on Interior and Insular Affairs on issues of concern to Native Hawaiians; and

WHEREAS, the Legislature of the State of Hawaii also has a abiding and deep commitment to the fulfillment of the national purposes relating to Native Hawaiians and truly affecting all of the citizens of Hawaii; and

WHEREAS, it is, therefore, appropriate for this Legislature to express its formal beliefs in the matter of Native Hawaiian claims against the United States for actions which occurred in

1893, and subsequently with American annexation of the Islands of Hawaii in 1898; and

WHEREAS, based upon a careful examination of historical records and accounts the Legislature of the State of Hawaii has determined there is sufficient reason to believe that:

1. The United States, through its representatives in the State and Navy Departments, did encourage and actively supported rebellion against the legitimate government of the King of Hawaii;
2. The involvement of U.S. Minister John L. Stevens was crucial to the success of the rebellion, and that his refusal to remain neutral in the domestic affairs of the Kingdom and, instead, to become an active agent in the planning and military force supporting the insurrection by ordering the landing and placement of American marines in a manner and position unmistakably intended to intimidate the Queen of Hawaii and her government;
3. Without such armed American support, the insurgence would have failed for a lack of popular support and insufficient arms; and
4. Such actions by the American minister and forces was a breach of international law, of treaties with the Kingdom of Hawaii, and was characterized by President Grover Cleveland in his "Executive Message to Congress" (December, 1893) as an illegal and immoral act of war against a feeble and trusting nation; and

WHEREAS, because of these American actions the Queen yielded her authority and that of her government to the United States through Minister Stevens, who did not forward her plea for review by the United States but acted to recognize a provisional government composed of leaders of the insurrection and to declare an American protectorate over the Islands; and

WHEREAS, these actions were augmented two weeks later by the occupation of American troops in all government buildings of the

Hawaiian Islands at the request of the provisional government from a fear of being unable to maintain control; and

WHEREAS, these actions culminated in the assertion of control by the subsequent Republic of Hawaii over the crown, government, and public lands of the Kingdom of Hawaii; and

WHEREAS, such lands and sovereignty represented the traditional and ancestral land rights and titles to the Native Hawaiian people; and

WHEREAS, these ancestral rights and lands were ultimately ceded to the United States by a government whose existence was dependent upon the actions and agents of the United States; and

WHEREAS, this transfer occurred without the consent of the Native Hawaiian people, without compensation for their interests, and without any explicit protection of their interests; and

WHEREAS, through amendments to the State Constitution in 1978, the people of the State of Hawaii ratified and formally acknowledged the rights of Native Hawaiians to a legislatively determined pro rata share of the proceeds of such lands ceded to the United States and returned as a public trust to the State of Hawaii in the Admission Act of 1959; and

WHEREAS, in the ratification of another constitutional amendment in 1978, the people of Hawaii also established an Office of Hawaiian Affairs to administer the proceeds from this trust, and explicitly empowered the Office to be the receptacle for all moneys or lands granted to the Native Hawaiians as restitution by the United States for damages incurred by the actions which resulted in the overthrow of the Kingdom of Hawaii; and

WHEREAS, these State Constitutional provisions, and their codification in the Hawaii Revised Statutes as Chapter 10, do indeed endorse and encourage Native Hawaiians rights and interests as a significant, proper, and public purpose; and

WHEREAS, this resolution is offered as part of a concerted and unified expression of the people of Hawaii, and has been adopted in this form by the State House of Representatives, 12th

Session; the County Councils of Maui and Hawaii, and the 1983 State Convention of the Republican Party of Hawaii; now, therefore,

BE IT RESOLVED by the Office of Hawaiian Affairs that the Congress of the United States is respectfully urged to acknowledge the illegal and immoral actions of the United States in the overthrow of the Kingdom of Hawaii in 1893, and to indicate its commitment to grant restitution for the losses and damages suffered by Native Hawaiians as a result of those wrongful actions.

Joseph G. Kealoha Jr.
Joseph G. Kealoha, Jr.,
Chairman

Rodney K. Burgess III
Rodney K. Burgess, III,
Vice-Chairman

Hayden F. Burgess, Trustee

Piilani C. Desha
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Thomas K. Kaulukukui Sr
Thomas K. Kaulukukui, Sr.,
Trustee

Moses K Keale Sr
Moses K. Keale, Sr., Trustee

Gard Kealoha
Gard Kealoha, Trustee

Walter L. Ritte, Jr., Trustee

Adopted: November 4, 1983

OHA 83-17

A RESOLUTION

URGING THE CONGRESS OF THE UNITED STATES TO ESTABLISH A JOINT FEDERAL-STATE CEDED LANDS COMMISSION TO REVIEW THE STATUS AND NEED FOR FEDERALLY-CONTROLLED LANDS IN THE STATE OF HAWAII

WHEREAS, the history and development of land tenure patterns and laws in Hawaii are truly unique and without parallel in the experience of the United States; and

WHEREAS, these historical and continuing differences are traceable, in part, to the Polynesian tradition of the Islands, the manner and nature of American annexation of Hawaii and the reflection of these forces in the terms and conditions of the Admission Act of the State; and

WHEREAS, 1.7 million acres of crown, government and public lands were ceded to the United States by the terms of American annexation by the then Republic of Hawaii; and

WHEREAS, this cession was concluded between two nations -- albeit without the consent of or compensation to the people of Hawaii -- with the mutual acknowledgement that such lands would be used for the "benefit of the inhabitants of the Hawaiian Islands;" and

WHEREAS, the manner and terms of the ceded lands transfer created a public trust which cannot be abrogated or unilaterally altered without violating international law structures or the terms of a bilateral international agreement; and

WHEREAS, these conditions were discussed and recognized in the 1947 Congressional hearings on the admission of the then Territory of Hawaii as a state, and resulted in the inclusion of Section 5 in the proposed Admission Act of that year and all subsequent bills; and

WHEREAS, the final form of the Admissions Act for the State of Hawaii -- as enacted by Congress, signed by the President of the United States and ratified by the citizens of Hawaii -- acknowledged a trust which was to be maintained and managed for the benefit of all the "inhabitants" of Hawaii; and

WHEREAS, the bulk of these lands were returned in fee to the State of Hawaii in the Admission Act, with explicit trust impositions and the naming of two possible beneficiary classes: Native Hawaiians, as defined in the Hawaiian Homes Act, and the general public; and

WHEREAS, the broad public purposes enunciated as consistent with the trust could be fulfilled at the discretion of the State; however, any purpose outside those named would result in a breach of trust; and

WHEREAS, the State of Hawaii, in the State Constitution of 1978, acknowledged the beneficiary interest of native Hawaiians and provided a pro rata share of the ceded lands revenues be set aside for the "betterment of native Hawaiians." These funds are administered and managed by the Office of Hawaiian Affairs whose Board of Trustees are elected by all Hawaiians; and

WHEREAS, this trust as a federal responsibility was not extinguished by the Admission Act or its terms. All ceded lands set aside for national park purposes were declared fee and the property of the Department of the Interior. However, it was the intent of Congress that all other lands controlled by the federal government were subject to return and incorporation into the trust of the State of Hawaii; and

WHEREAS, this reversionary interest of the State in all non-park federal lands is now also of explicit trust interest to native Hawaiians by the establishment of the Office of Hawaiian Affairs; and

WHEREAS, in the 24 years since Statehood, less than 600 acres of federally controlled ceded lands have been returned from a total of nearly 404,000 acres;

NOW, THEREFORE, BE IT RESOLVED, that the Office of Hawaii Affairs urges the Congress to establish a Joint Federal-State Ceded Lands Commission for the State of Hawaii, to review the present status use and possible release of federally controlled ceded lands in Hawaii; and

BE IT FURTHER RESOLVED, that this Commission advise the Congress on the status of these lands, and have the authority to declare such lands surplus and available for return to the State of Hawaii, and that native Hawaiians be included and consulted in the course of the Commission's review.

Joseph G. Kealoha, Jr.,
Chairman

Rodney K. Burgess III

Rodney K. Burgess, III,
Vice-Chairman

Hayden F. Burgess, Trustee

Piilani C. Desha

Piilani C. Desha, Trustee

Rockne C. Freitas, Trustee

Thomas K. Kaulukukui, Sr.,
Trustee

Moses K. Keale, Sr., Trustee

Gard Kealoha

Gard Kealoha, Trustee

Walter L. Ritte, Jr., Trustee

Adopted: November 4, 1983
Date

OHA 83-18

A RESOLUTION

URGING THE CONGRESS OF THE UNITED STATES TO INCLUDE NATIVE HAWAIIANS IN THE DEFINITION OF NATIVE AMERICAN AND EXTEND TO NATIVE HAWAIIANS ELIGIBILITY IN ALL PROGRAMS AFFECTED BY SUCH DEFINITION WITHOUT PREJUDICE

WHEREAS, the Congress of the United States has recognized the unique attributes of indigenous American peoples as constitutionally and morally deserving of national attention and legislation; and

WHEREAS, the Congressional willingness to extend this recognition to native Hawaiians is now imperfectly and unfairly extended; and

WHEREAS, the Hawaiian people are the indigenous inhabitants of the Hawaiian Islands; and

WHEREAS, at the time the Kingdom of Hawaii and its government was illegally overthrown in 1893, it was fully recognized as a member of the international community of nations; and

WHEREAS, native Hawaiians were citizens of an organized self-governing nation whose status as an independent sovereign was formally recognized by other nations; and

WHEREAS, as early as 1826, a treaty was negotiated, although never ratified, between the United States and the Hawaiian Kingdom; and

WHEREAS, in 1842 American President John Tyler officially recognized Hawaii as a sovereign nation and declared a policy of respecting Hawaiian independence; and

WHEREAS, in recognition of this independence, Congress appropriated monies for the appointment of a minister from the United States to Hawaii; and

WHEREAS, the federal government has long recognized native Hawaiians as a distinct indigenous group and has dealt with them in a manner similar to other native American groups; and

WHEREAS, native Hawaiians meet many of the criteria which entitle an indigenous group of federal protection and services; and

WHEREAS, the Congress of the United States explicitly acknowledged its responsibility and ability to enact legislation to benefit native Hawaiians with the enactment of the Hawaiian Homes Commission Act of 1920, which placed over 200,000 acres of land in trust to rehabilitate native Hawaiians; and

WHEREAS, in the 1959 Admission Act, the Congress of the United States extended the scope of the federal government's recognition of native Hawaiians by requiring the State of Hawaii - by compact - to adopt the Hawaiian Homes Commission Act as part of the State Constitution; and

WHEREAS, the State Admission Act further recognized native Hawaiians in Section 5(f) by designating "the betterment of conditions of Native Hawaiians" as one of the five trust purposes for which proceeds and income from the ceded lands trust could be expended; and

WHEREAS, the State Admission Act singles out native Hawaiians from the general public as specific beneficiaries of the ceded land trust, in recognition of the federal government's recognition of the status of native Hawaiians; and

WHEREAS, in 1974 the Congress enacted legislation making Hawaiians eligible for participation in the programs of the Administration for Native Americans; and

WHEREAS, in 1978 the Congress amended the Comprehensive Employment and Training Act to include Hawaiians in the Indian Manpower Program administered by the Director of Indian and Native American Programs of the U. S. Department of Labor; and

WHEREAS, in the same year the Congress adopted the American Indian Religious Freedom Act and included native Hawaiians in its guarantees of religious tolerance; and

WHEREAS, despite their inclusion in these abovementioned programs, native Hawaiians are presently ineligible to participate in the large majority of federal programs established for the benefit of other native American peoples; and

WHEREAS, through amendments to the Hawaii State Constitution in 1978, ratified by the people of the State of Hawaii, an Office of Hawaiian Affairs was established to serve as the principal public agency in the State responsible for all Hawaiians, and to receive a pro rata share of the ceded lands and trust revenues; and

WHEREAS, the Office of Hawaiians Affairs is governed by a nine-member Board of Trustees who are elected by the Hawaiian people; and

WHEREAS, native Hawaiians share all of the attributes and needs common to other indigenous peoples and are entitled to any and all benefits extended to other Native Americans;

NOW THEREFORE BE IT RESOLVED that the Board of Trustees of the Office of Hawaiian Affairs urges the Congress of the United States to include Native Hawaiians in the definition of Native American and extend to Native Hawaiians eligibility in all programs affected by such definition without prejudice.

Joseph G. Kealoha, Jr.

Joseph G. Kealoha, Jr.,
Chairman

Rodney K. Burgess III

Rodney K. Burgess, III,
Vice-Chairman

Hayden F. Burgess, Trustee

Piilani C. Desha
Piilani C. Desha, Trustee

Rockne Freitas
Rockne C. Freitas, Trustee

Thomas K. Kaulukukui Sr.
Thomas K. Kaulukukui, Sr.,
Trustee

Moses K Keale Sr.
Moses K. Keale, Sr., Trustee

Gard Kealoha
Gard Kealoha, Trustee

Walter L. Ritte, Jr., Trustee

Adopted: November 4, 1983
Date

OHA 83-19

A RESOLUTION

URGING CONGRESS TO REVIEW THE IMPLEMENTATION OF
RECOMMENDATIONS ADOPTED BY THE JOINT FEDERAL-STATE TASK
FORCE ON HAWAIIAN HOME LANDS IN 1983, AND TO INITIATE BREACH
OF TRUST OR OTHER APPROPRIATE LEGAL ACTION FOR
NON-COMPLIANCE BY THE STATE OF HAWAII OR THE U.S. DEPARTMENT
OF INTERIOR

WHEREAS, the Hawaiian Homes Commission Act of 1920 (HHCA) was enacted by the United States Congress on July 9, 1921; and

WHEREAS, said Act set aside over 200,000 acres of land for the rehabilitation of native Hawaiians through a program of land awards for homesteading, ranching, and/or farming; and

WHEREAS, the Hawaiian Homes Commission Act of 1920 was implemented and administered by the Territorial government through the Hawaiian Homes Commission until the Hawaiian Islands became a State in 1959; and

WHEREAS, the Act provided that only Congress could alter or amend the beneficiary class or benefits of program, and that all non-beneficiary transfers of the lands were subject to approval by the Secretary of the United States Department of Interior provided that lands were exchanged and not lost by such transfers; and

WHEREAS, in 1959, the Admission Act of the State of Hawaii included provision for a compact between the United States and Hawaii that the Hawaiian Homes Commission Act shall be included in the State Constitution Act as a condition of admission; and

WHEREAS, in 1959, the Department of Hawaiian Home Lands was established and title to Hawaiian Home Lands was transferred to the State of Hawaii; and

WHEREAS, the compact and transfer of title of the Admissions Act also explicitly retained the power of Congress to exercise its prerogatives and obligations as outlined in the HHCA; and

WHEREAS, provisions of the Act further vest control over the use of such lands in the Hawaiian Homes Commission and not in any other government agency; and

WHEREAS, since the passage of the HHCA, a series of 33 Executive Orders and Proclamations by Territorial and State

Governors, have transferred over 30,000 acres of Hawaiian Home land from the DHHL's jurisdiction to other agencies, departments and individuals, without fair compensation for use or a mandated exchange of lands; and

WHEREAS, in the 60 years of the Act, less than 3,500 awards and less than 15% (a total of less than 30,000 acres) of the lands have benefited native Hawaiians; and

WHEREAS, over 80% of the DHHL land inventory is currently leased to non-native Hawaiians as a means of generating income for the program; and

WHEREAS, report by the U. S. Commission on Civil Rights in 1980 and a suit by the "Hou Hawaiians" indicated that a breach of trust was inherent in such actions and conditions; and

WHEREAS, the Federal-State Task Force on the Hawaiian Homes Commission Act was jointly established by the U. S. Secretary of Interior and the Governor of the State of Hawaii on July 14, 1982 in response to such charges and as a means of redressing such violations; and

WHEREAS, the Federal-State Task Force was mandated to make recommendations to the Governor of the State of Hawaii and to the U. S. Secretary of the Interior on ways to better effectuate the purposes of the Hawaiian Homes Commission Act and to restore and accelerate the distribution of benefits of the Act to its beneficiaries; and

WHEREAS, on August 15, 1983, the Federal-State Task Force submitted its findings and 134 recommendations to the Secretary of the Interior and the Governor for the State of Hawaii; and

WHEREAS, the Task Force can only seek voluntary compliance with its recommendations; and

WHEREAS, the Governor has already publicly stated that he will not comply with those recommendations which request the State of Hawaii to rescind all set asides of DHHL lands which are not utilized for native Hawaiians;

WHEREAS, it is the power and fiduciary responsibility of Congress to enforce those Task Force recommendations which affect the integrity of the Hawaiian Home Lands trust; and

WHEREAS, the Trustees of the Office of Hawaiian Affairs concur in the recommendations and suggested actions of the Joint Federal-State Task Force as critical to a full and legal restoration of native Hawaiian rights and benefits embodied in the language and spirit of the Hawaiian Homes Commission Act; and

WHEREAS, the Trustees of the Office of Hawaiian Affairs also endorse the recommendations regarding the Hawaiian Home Lands's contained in Volume II of the Final Report of the Native Hawaiian Study Commission; now therefore

BE IT RESOLVED that the Office of Hawaiian Affairs urges Congress to review the implementation of recommendations adopted by the Federal-State Task Force on Hawaiian Home Lands on August 15, 1983, and to initiate breach of trust or other appropriate legal action for non-compliance by the State of Hawaii or the U. S. Department of Interior.

Joseph G. Kealoha, Jr.,
Chairperson

Rodney K. Burgess III
Rodney K. Burgess, III,
Vice-Chairperson

Hayden F. Burgess, Trustee

Piilani C. Desha
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Thomas K. Kaulukukui, Sr.,
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Moses K. Keale, Sr., Trustee

Gard Kealoha

Gard Kealoha, Trustee

Walter L. Ritte, Jr., Trustee

Adopted: November 4, 1983
Date

Senator **Matsunaga**. Rest assured that your entire statement will appear in the record, and brought to the attention of the entire membership of the committee.

Next we have a panel of spokesmen for the Council of Hawaiian Organizations, and they are Mr. John Agard, Mr. Melvin Kalahiki, Mr. Randy Kalahiki, Haunani Apeliana, and Mr. Louis "Buzzy" Agard. Are you all here?

A **Speaker**. Mr. Chairman, we're here except one of our party, but I think in the interest of time, we would like to move on.

Senator **Matsunaga**. Will you please proceed, Mr. Agard.

STATEMENT OF LOUIS K. AGARD, JR., COUNCIL OF HAWAIIAN ORGANIZATIONS

Mr. **Louis Agard**. Chairman, Senator Matsunaga, Congressman Danny Akaka, and all of the patient and concerned audience, aloha.

The panel of the Council of Hawaiian Organizations is pleased to be invited by the hearing committee to comment on principally volume I and additionally volume II of the Native Hawaiians Study Commission Final Report.

The council, as an older organization addressing Hawaiian issues by this panel, wishes to report several findings relative to volume I. Essentially, the panel finds volume I deficient in several areas which will be, hopefully, enumerated. Historically, volume I appears to be largely an extension of the controversial Morgan Report of 1894 and therefore the panel intends to convey some of the needs and desires of many native Hawaiians today.

The recommendations in volume I appear temporary or stopgap measures to be gleaned from services already available or largely utilized. Conversely, native Hawaiians desire long-term sustained funding programs that they themselves are involved in designing.

Mr. Chairman, my name is Louis Agard and I will coordinate this panel of the council. We expect to respond to the proposed format of the three subjects itemized from Senator Matsunaga's office. In addition, we will excerpt portions of our written testimony in summaries based upon the six principal issues of our written testimony, which is ample and before you this afternoon.

We will divide our testimony into discussing sections of the written testimony. This procedure may provide you with the opportunity to follow during our presentation.

Our first presenter is Ms. Mahealani Broadhurst, and she will attempt to cover section "A."

Mahealani, Please.

STATEMENT OF MAHEALANI BROADHURST, COUNCIL OF HAWAIIAN ORGANIZATIONS

Ms. **Broadhurst**. Thank you, and thank you for this opportunity to appear before you on behalf of the Council of Hawaiian Organizations. I was approached about 2 hours ago to present a summary contained in a very lengthy report that the members of our council have worked very hard on, and my intention is just to read from their summary. Thank you.

The Council of Hawaiian Organizations feels that there are certain issues contained in the findings of volume I that require clarification. Accordingly, they have enumerated these issues in a summary contained in section "A" of their report.

Point I. Volume I was produced in a climate and also within a timeframe that was not conducive to impartiality. The report suggests the use of a partisan approach rather than that implied in the drafting of Public Law 95-565, "to conduct a study of the culture, needs, and concerns of the Native Hawaiians."

Point II. Volume I was prepared with an inadequate budget, which only utilized limited research, and then provided insufficient circulation of draft copies for public review and comment. There were only 800 sets of the final report for public distribution to address 100 years of native Hawaiian concerns and denial.

Point III. Most importantly, the thrust of volume I findings are misdirected. Those findings seek to determine how much compensation should be paid for the taking of Hawaiian lands and the loss of dominion. It is difficult to place a value upon this loss of land and dominion. However, an important point is being overlooked, and that point is that native Hawaiians never intended to convey the land taken. Thus, they have always maintained the right of first refusal to sell any of it.

Point IV. A Congressional Research Service study conducted in 1973 suggests that native Hawaiians were compensable for the seizure of their lands in the overthrow of 1893. Some 10 years later, in 1983, volume I of the Native Hawaiians Study Commission concludes the exact opposite result, and that native Hawaiians are not after all compensable for the seizure of their assets. An arbitration or accommodation between these two extreme findings appears not unreasonable.

Point V. Volume I overlooked an important request made to the Native Hawaiians Study Commission relating to the Hawaiian constitution. A prior inquiry on this issue filed with the U.S. Department of the Interior, met with a reply from the Department indicating that the inquiry was premature as the study Commission legislation was pending and at that time might address this issue. However, volume I never addressed the constitutional inquiry made, and the Council of Hawaiian Organizations feels that this issue requires consideration.

Point VI. Another study, "The Case for Reparations for Native Hawaiians" by Karen Blondin concludes that "native Hawaiian interest to the crown and government lands voids any other interest." The United States therefore did not acquire any legal interest in the lands the Republic ceded to the United States because the Republic of Hawaii had no interest to give.

Thank you very much.

Senator **MATSUNAGA**. Thank you.

Mr. **LOUIS AGARD**. Mr. Chairman, our next presenter will be Mr. Keoni Agard under section B, before you.

STATEMENT OF KEONI K. AGARD, COUNCIL OF HAWAIIAN ORGANIZATIONS

Mr. KEONI AGARD. Mr. Chairman, Congressman Akaka, good afternoon.

I'm Keoni Agard, an attorney, speaking on behalf of the Council of Hawaiian Organizations.

Upon review of volume I, it is evident that the researchers employed were not familiar with the origin and history of the native Hawaiian. Researchers employed by the U.S. Government, working within a limited timeframe and not acquainted with the subject matter have drawn incomplete as well as erroneous findings and conclusions in volume I.

The prevailing national economic conditions may have well influenced the findings and conclusions in volume I. Such conditions, we submit, should not be used as a measuring stick to determine whether native Hawaiians are entitled to compensation and/or return of ancestral lands. In order to rectify past injustices and to address the native Hawaiian problem truthfully, the merits of the case must be heard.

Volume I is a partisan approach and presents a lopsided view of the history of Hawaii. Its content is based on secondary sources and does not reflect the full and true history of Hawaii.

Volume I relies on the 1894 Morgan Report. We submit that Congress should also carefully consider the 1893 Blount Report on its merit. This report came first in time while the events of the overthrow of the Hawaiian monarchy were still fresh in the minds of all the parties concerned. The annexationists, a handful on nonnative Hawaiians, went to Washington, DC, with hopes of legitimizing their wrongful acts, but failed to get their treaty of annexation approved by the U.S. Senate in 1893. Subsequently, the 1894 Morgan Report was filed at the urging of the annexationists. Today, we recommend that the Blount Report be given an honest assessment and fair consideration before any decision is made in addressing the wrongful acts surrounding the overthrow of 1893.

The author, at page 291, in volume I, wisely advised that the Commission obtain a nongovernmental historian so as to avoid any appearance of bias. The writer further recommended that if rewriting was to be done, "it should be done by either an academic or an independent historian who has no administrative connection with the U.S. Government." This writer suggests a clear need for an impartial approach. Accordingly, we submit that this approach is vital, in order to reach a just result, and strongly urge that this committee in Congress give serious consideration to the testimony of scholars in history, some of which have and will testify here later on today.

With regard to procedural obstacles, the insufficient number of copies of the preliminary and final reports printed for circulation can be attributed to an insufficient budget. This condition is reflected by the volume I author's statement in which he states:

> Unfortunately, the 6 to 8 week time limit, the lack of funds for travel, and the fact that this work was assumed for completion in addition to other work normally done by this office precluded any more extensive treatment.

This statement suggests that work done on volume I was not treated as a priority, was underfinanced, and implies that the work was not taken in a serious vein.

Adequate time was not given for careful thought and deliberation upon the issues. We submit that because of these glaring procedural deficiencies, the native Hawaiians case was not given a fair and even shake.

Additionally, a question was raised in volume I as to the number of native Hawaiians who signed the Constitution of 1894. There were six native signers to this document. Six signers out of a total of some 40,000 native Hawaiians can hardly be viewed as a clear majority. There was no effort on the part of the provisional government or the so-called Republic of Hawaii to take a popular vote to determine the will of the Hawaiian people. The loss of domain and dominion were summarily dismissed in volume I. It's fair to state the issues regarding compensation and return of ancestral lands have never been fully addressed.

Other speakers have and will address those critical points today.

In addition, we join in the support of earlier comments made by other speakers, that agency is a key issue; and also that the U.S. Representative and the U.S. Armed Forces, as agents of the United States, wrongfully committed injurious acts in violation of international law against a benign people, for which the United States cannot now disavow.

Thank you for this brief opportunity to allow us to address our concerns.

Senator **Matsunaga**. Thank you very much.

Mr. **Louis Agard**. Mr. Chairman, Mr. Melvin Kalahiki will attempt to cover section C—the most controversial—covering diplomatic and congressional history.

STATEMENT OF MELVIN KALAHIKI, COUNCIL OF HAWAIIAN ORGANIZATIONS

Mr. **Melvin Kalahiki**. Mr. Chairman, Representative Akaka, aloha.

I want to thank God first, for bringing you to Hawaii, Mr. Chairman, and giving us the help that is needed. Thank you.

The year was 1893. January 17. Fifty-three years of Hawaiian government was overthrown by a handful of dissidents with the help of the Armed Forces of the United States of America. On the same day, January 17, 1893, Minister Stevens effectively created a protectorate when he raised the American flag with troops ashore, which only protected adventurous insurgents. Steven's recognition of a non-de-facto government is clear evidence of the illegitimacy of a system that has to suppress a nation and people who enjoy the majority support, in government, as did native Hawaiians in 1893.

Mr. Chairman, I had 15 pages, you know, to go through, but however, I will try to summarize my remarks only on 6 pages.

My first remark was taken out from page 43. The next one will be from page 47.

In 1893, "race baiter" Sereno Bishop attacked Queen Liliuokalani as the offspring of a negro bootblack. In 1900, Robert Wilcox, a part Hawiian, was opposed from assuming his elected seat as the delegate to Congress by Governor Dole, who had been recently appointed. Meanwhile, there were statements made that Native Hawaiians were irresponsible and, "If color is to rule in American Territory, the color will be white." The controlled newspapers violently opposed the so-called Hawaiian bloc vote. It was in 1903 that a delegate to Congress, Prince Kuhio, reported that the white Reform Party of the sugar planters did not want any "niggers" in the legislature. In 1930, U.S. Admiral Sterling proposed that Hawaii be put under a commission form of government as Hawaiians were not fit for self-government, and there were many native hoodlums lurking about threatening white women. This was the result of the infamous *Massey* case trail, and the arbitrary slaying of a native Hawaiian.

After the overthrow of 1893, the Harrison administration also held the view that there were political claims in Hawaii the United States ought to liquidate. The annuity first proposed in the 1854 treaty was reviewed and the government in Hawaii further legislated such a provision for the ex-Queen. The Harrison administration was to offer that the ex-Queen might be extended $20,000 annual for her lifetime. Eventual opposition in Hawaii led to the ex-Queen receiving nothing and the issue has remained unresolved. Acquisition of Hawaii was desirable by any means, purchase or cession or some form of compensation. After annexation was completed in 1898, President Cleveland was to say, "Hawaii is now ours, and I am ashamed of the whole affair."

Senator MATSUNAGA. I would remind the panel that the entire document will be made a part of the record.

Mr. MELVIN KALAHIKI. OK. Can I just summarize, then——

Senator MATSUNAGA. All right.

Mr. MELVIN KALAHIKI. On the last page.

The time has arrived when native Hawaiians must recognize that they will be forced from their own homeland by more pressures upon their control. Pressures of the desirability of living in Hawaii created the high cost of living afforded by the affluent. Yes, we forget the long denial and the lack of social caring and the widespread commercialization, stretching resources and living with the rude behavior. The question is, when—when does it all end, and is more to be expected.

Thank you.

Senator MATSUNAGA. Thank you very much.

Mr. LOUIS AGARD. Mr. Chairman, our next presenter is Mr. John Agard on section "D," a very important portion, "The Basis of the Native Hawaiian Claim."

STATEMENT OF JOHN AGARD, COUNCIL OF HAWAIIAN ORGANIZATIONS

Mr. JOHN AGARD. Senator Matsunaga, Congressman Akaka, members of the U.S. Senate Committee on Energy and Natural Resources, and concerned brothers, and sisters. Aloha.

Our testimony summarizes section "D" of the Council of Hawaiian Organizations publication you already have, entitled, "Response to the Native Hawaiians Study Commission Final Report," from the Council of Hawaiian Organizations.

My summary statements are derived from pages 88 through 115 of this document. As State president I speak on behalf of the Congress of the Hawaiian People. We are a member of the Council of Hawaiian Organizations, for which our testimony is being presented. Along with other testifiers, we have also taken the position based on review of volume I. We also believe the findings and conclusions reached by the majority of the Native Hawaiians Study Commission members are inaccurate and do not present an objective assessment of the U.S. role in the overthrow of our sovereignty of Hawaii. My comments will address our concerns related to the origin or basis of our native Hawaiian claim, which appears to be inadequately covered in volume I, part 2, "Federal, State, and Local Relationships—Land Laws and Land Relationships," pages 251 through 257.

Comments are also intended to supplement the dissenting report contained in volume II on the "Collective Rights in Common Lands," page 90 through 99.

I emphasize the origin to the native Hawaiian claim to their common lands come from the following activities:

After William Richards wrote the declaration of rights in 1839 came the constitution of 1840. The declaration of rights would protect the commoners' and chiefs' lives and house lots from being taken. In the debate over the development of the constitution of 1840, it was not so much whether Hawaiian or Western law would prevail, but rather would the primary influences be American or British—an argument that would continuously plague the Hawaiian government up to the overthrow.

On the 27th day of April 1845 the King, Kamehameha III, in privy council at the Council House in Honolulu passed an act under the constitution of 1840 as a supplement to statute laws of Hawaii. By referring to the famous diagram "A" on page 111, the King first reserved for himself and the dignity of the Hawaiian crown lands totaling approximately 1 million acres to be held by his heirs and successors forever.

The second part of the King's domain went to the chiefs and people. This is approximately 1.5 million acres, as indicated on the diagram. And, of course, approximately 1.6 million acres went to the government. By 1848, the Great Mahele had finalized. The intent of the Mahele, as seen by one of its architects, Chief Justice Lee. was to define the commoners' rights, so that they might have something of their own.

As president of the board of commissioners to quiet land titles, Lee drafted the principles that became statute law. In the principles, the board of commissioners concluded that there were but three classes of persons having vested rights in the lands of the kingdom. If you will refer to page 112, you will see in the shaded area of that diagram what these three are. It does total approximately 1,338,000 acres.

Because the board of commissioners, the legislature and the King had all previously promised the commoners an undivided one-third interest in most of Hawaii an intent was expressed, but yet to be awarded. We submit that the issue on vested rights remains a valid consideration.

In conclusion, we strongly recommend the contents of section D in the Council of Hawaiian Organizations publication be included when the Native Hawaiians Study Commission Report is forwarded to Congress for consideration.

Mahalo for this opportunity, and for the time.

Senator **MATSUNAGA**. Thank you very much.

Mr. **LOUIS AGARD**. Mr. Chairman, our last presenter will be Mr. Randy Kalahiki, who will deal with the many concerns of the experience of native Hawaiians at the present time.

STATEMENT OF RANDY KALAHIKI, COUNCIL OF HAWAIIAN ORGANIZATIONS

Mr. **RANDY KALAHIKI**. Aloha, members of this committee, Senator Matsunaga, Representative Akaka, and staff, and the people of Hawaii here.

My name is Randy Kalahiki, Jr. In 1979, and 1977, I was appointed to an advisory commission on public law to do with Native American Religious Freedom Act. I went to specifically zero in on one major need of the Hawaiians, because I was told it was totally left out of volume I and II. That important need is religion. I feel very strongly about the spiritual aspect of the Hawaiian people, because religion played a major part in their life style. Therefore, I dispute volume I.

As we know, the Hawaiians were a very spiritual people, in which compassion involved their daily lives. They're giving to anything in their beauty of living. Without getting in touch with their spiritual and religious feeling, the Hawaiians cannot be understood.

I would like to read from a section—section E, pages 130 to 132.

RELIGION

It is obvious that native Hawaiians developed a system of worship unique to the regions, lands and similar to how native people generally develop a reverence for the Earth's replenishment, capacity and bounty. All undertakings were preceded by ceremonies paying homage to a deity. In this light the raising of the staple, taro, was to take on a significant religious aspect, for it was the giver of life and that capacity is being diminished. All of the lands of Hawaii were gods' lands and spirits'. Supplications must be rendered for ensuring its bounty. By these activities, native Hawaiians attained a high degree of cultivation, which is attested to by reports from observations at the time of Captain Cook's arrival in 1778 and subsequent to that first landing. The lands were in the highest state of cultivation, and this was observed on all of the islands visited.

At the same time, the conduct of worship was also observed and appeared to be an unselfish practice to obtain favor and blessings for the entire community.

The conduct of early Hawaiians could be exemplified by their religion, which was friendly and welcomed strangers. The first encounters were not savage meetings, although later contacts were to become violent and the image of savagery was to be attributed to native Hawaiians. But it was not considered savage to slaughter them with cannon, nail and chain—shot on occasion. Although, if they retaliated, it was savagery.

It does seem contradictory, but the first reports describe natives as peaceful, happy, healthy, and having organized society. It can be said native Hawaiians made the lands they discovered on arrival, productive lands by the practices they developed and applied in cultivation. Their system of composting proved to be successful to keep the land producing without chemicals. Enough staples were produced to support a population of some 400,000 people. They learned to share as they must and had the most to offer newer arrivals even if it made their own lots less convenient, to divide food supplies and other comforts.

I'd like to go on an on, but I know, the Senator said——

Senator MATSUNAGA. Yes, we have still 45 more witnesses left, so I'd appreciate it if you'd summarize.

Mr. RANDY KALAHIKI. OK. I'd just like to summarize—it's extremely important to know the information—pages 130 to 132—and, I think this is—I dispute volume I and volume II because it's not in there.

Than, you so much. Aloha.

Senator MATSUNAGA. Thank you very much, Randy.

Mr. LOUIS AGARD. Mr. Chairman, we'd like to express our gratitude to you for your patience, and to all of the audience. I was going to make a small summary, but I will just conclude it by saying that we have spent much time working on this production to attempt to refute volume I almost paragraph by paragraph. We've spent much, much time going through it throughly so that we could look at it carefully. And we've presented a very large volume that can put down volume I, we feel, totally, completely, because it's so poorly put together, we think that it deserves the things that we're doing in critiquing it.

I thank you very much for your attention.

Senator MATSUNAGA. Thank you very much. Your scholarly and voluminous report will be made a part of the record.

Mr. LOUIS AGARD. Thank you.

Senator MATSUNAGA. Thank you.

All right, our next witness is the president of Alu Like, Inc., Miss Ann Nathaniel.

Ms. NATHANIEL. Thank you.

Senator MATSUNAGA. Again, let me reiterate my earlier request that I would deeply appreciate your summarizing your statement.

STATEMENT OF ANN K. NATHANIEL, ALU LIKE, INC.

Ms. NATHANIEL. I shall do, sir.

Mr. Chairman, members of the committee, on behalf of Alu Like, Inc., and its approximately 12,000 members, I bid you aloha kakou.

Senator MATSUNAGA. Aloha.

Ms. NATHANIEL. And in the interests of time, I shall be extracting out specific statements, if I may.

I am Ann K. Nathaniel, chairman of the board for Alu Like, Inc., a private, nonprofit, community-based, statewide organization which has as a primary public purpose that of assisting native Hawaiians to develop economic and social self-sufficiency.

Alu Like is prompted to comment today based upon our experiences in direct and indirect community services delivery over nearly 9 years and upon our collection and analysis of data which currently is the most comprehensive information about native Hawaiians in the State of Hawaii.

We wish to speak to several of the recommendations in both volumes I and II. In volume I, part 1, page 28, the report states, and I quote:

> Based on the information it has collected, the Commission believes that the social and economic problem of Native Hawaiians deserves immediate action and that these needs should be addressed promptly.

The data provided substantiates this. For your additional information, we have included data which Alu Like was invited to present in recent congressional hearings, and we would be pleased to provide other information as needed.

However well-intentioned, the private sector and organizations such as Alu Like can make only a minimal impact in reversing the problems which have magnified over the years unless major resources from the Federal and State governments are earmarked and expended to support the action plans.

Therefore, Alu Like recommends the following:

The order of priority for action recommended in volume I be revised to give first priority to the Federal Government, second to the State, third to local governments, and fourth to the private sector. This priority order should be maintained for at least the next several years or until the positive impact is documented. The Federal Government shall include native Hawaiians in all native American programs. The Federal and State agencies shall earmark funds to provide additional assistance from existing programs. The definition of native Hawaiian in Federal legislation shall mean any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778.

I wish to note: The Hawaiian Homes Commission Act of 1920 shall be exempted from the "no-quantum" definition until the Federal-State Task Force on the Hawaiian Homes Commission Act is reconstituted and, in consultation with the community, can make a specific recommendation.

In addition, the issue of ceded lands is significant to deliberations and planning at the State level. Coordinated action plans in this regard are needed.

Therefore, Alu Like recommends the following:

That the U.S. Senate Committee on Energy and Natural Resources and the U.S. House Committee on Insular and Interior Affairs clarify the nature of the claims by native Hawaiians for losses of domain and dominion and determine a just and equitable resolution.

As recommended in volume II, page 10, the committee consult and involve native Hawaiians in the deliberations and resolution of these claims, and that proposed restitution be subject to formal acceptance by native Hawaiians; and

Pending resolution of these claims that appropriate action be taken to maintain current use and status of the lands controlled by the Federal Government in Hawaii and of the archipelagic waters of Hawaii.

As recommended in volume II, page 13, that the Congress establish a Joint Federal-State Ceded Land Commission for the State of Hawaii, one, to review in consultation with native Hawaiians, the present status, use, and possible release of federally-controlled ceded lands in Hawaii; and two, to advise Congress on the status of these lands and have the authority to declare such lands surplus and available for return to the State of Hawaii.

In volume II, the attempt is made to include a discussion on the Hawaiian Homes Land Trust to draw conclusions and make recommendations. We realize that your committee, Mr. Chairman, is aware that the Federal-State Task Force on the Hawaiian Homes Commission Act completed a comprehensive review of the Hawaiian Homes Commission Act, and submitted its report to the U.S. Secretary of the Interior and the Governor of the State of Hawaii in August 1983. Further, we expect that testimony will be provided from the chairman of the Hawaiian Homes Commission during these hearings.

Therefore, Alu Like commends to you the report and recommendations of the Federal-State Task Force on the Hawaiian Homes Commission Act.

In conclusion, the board of directors of Alu Like wishes to emphasize the need for immediate action to address the needs and concerns of Hawaiians. We ask that the committee, Mr. Chairman, take the lead in implementing recommendations in as expeditious a manner as possible. Hawaiians are prepared to take a strong role in helping themselves. We ask that you provide us the Federal resources and legislative and administrative mechanisms to do so.

Mahalo.

[The prepared statement of Ms. Nathaniel follows:]

TESTIMONY OF
ANN K. NATHANIEL
BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
APRIL 16, 1984

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, ON BEHALF OF ALU LIKE, INCORPORATED AND ITS APPROXIMATELY 12,000 MEMBERS, I BID YOU ALOHA KĀKOU.

WE APPRECIATE THE OPPORTUNITY YOU HAVE PROVIDED US AND OTHERS IN HAWAII TO PRESENT TESTIMONY ON THIS MATTER OF VITAL INTEREST TO HAWAIIANS AND HAWAII. THIS WILL BE THE FIRST TIME THAT THE HAWAIIAN COMMUNITY WILL BE INVITED TO PRESENT TESTIMONY ON THE RECOMMENDATIONS MADE IN VOLUMES I AND II OF THE NATIVE HAWAIIANS STUDY COMMISSION REPORT. WE ARE PLEASED TO DO SO.

I AM ANN K. NATHANIEL, CHAIRMAN OF THE BOARD FOR ALU LIKE, INCORPORATED, A PRIVATE NON-PROFIT COMMUNITY-BASED STATEWIDE ORGANIZATION WHICH HAS AS A PRIMARY PUBLIC PURPOSE THAT OF ASSISTING NATIVE HAWAIIANS TO DEVELOP ECONOMIC AND SOCIAL SELF-SUFFICIENCY.

ALU LIKE IS PROMPTED TO COMMENT TODAY BASED UPON OUR EXPERIENCES IN DIRECT AND INDIRECT COMMUNITY SERVICES DELIVERY OVER NEARLY NINE YEARS AND UPON OUR COLLECTION AND ANALYSIS OF DATA WHICH CURRENTLY IS THE MOST COMPREHENSIVE INFORMATION ABOUT NATIVE HAWAIIANS IN THE STATE OF HAWAII.

LET ME PREFACE MY REMARKS BY COMMENDING THE EFFORTS OF THE HAWAII CONGRESSIONAL DELEGATION WHICH RESULTED IN CREATING THE NATIVE HAWAIIANS STUDY COMMISSION TO "CONDUCT A STUDY OF THE CULTURE, NEEDS AND CONCERNS OF NATIVE HAWAIIANS". WE REALIZE THE DIFFICULTIES THAT THE COMMISSIONERS, STAFF AND SCHOLARS HAD IN COLLECTING INFORMATION, ANALYZING IT AND PREPARING RECOMMENDATIONS WITH TOO LITTLE TIME AND LIMITED FUNDS. MAHALO FOR YOUR EFFORTS.

WE WISH TO SPEAK TO SEVERAL OF THE RECOMMENDATIONS IN BOTH VOLUME I AND II.

1. IN VOLUME I, PART I, PAGE 28, THE REPORT STATES: (QUOTE) "BASED ON THE INFORMATION IT HAS COLLECTED, THE COMMISSION BELIEVES THAT THE SOCIAL AND ECONOMIC PROBLEM OF NATIVE HAWAIIANS DESERVE IMMEDIATE ACTION AND THAT THESE NEEDS SHOULD BE ADDRESSED PROMPTLY." (UNQUOTE)

THE DATA PROVIDED SUBSTANTIATES THIS. FOR YOUR ADDITIONAL INFORMATION, WE HAVE INCLUDED DATA WHICH ALU LIKE WAS INVITED TO PRESENT IN RECENT CONGRESSIONAL HEARINGS. WE WILL BE PLEASED TO PROVIDE OTHER INFORMATION AS NEEDED.

ALU LIKE APPLAUDS THE UNANIMOUS ACKNOWLEDGEMENT OF THE COMMISSION OF THE NEED TO PROMPTLY ADDRESS THE SOCIAL AND ECONOMIC PROBLEM OF HAWAIIANS. WE CONCUR THAT THERE IS A SHARED RESPONSIBILITY FOR THE FEDERAL, STATE AND LOCAL GOVERNMENTS AND THE PRIVATE SECTOR IN ADDRESSING EDUCATION, EMPLOYMENT SERVICES, HEALTH, HOUSING, CULTURE, DATA COLLECTION AND COORDINATION. HOWEVER, BASED ON ALU LIKE'S EXPERIENCE OF THE PAST EIGHT YEARS, THE ORDER OF PRIORITY FOR ACTION MAY NOT BE FEASIBLE.

HOWEVER WELL-INTENTIONED, THE PRIVATE SECTOR AND ORGANIZATIONS SUCH AS ALU LIKE CAN ONLY MAKE A MINIMAL IMPACT IN REVERSING THE PROBLEMS WHICH HAVE MAGNIFIED OVER THE YEARS UNLESS MAJOR RESOURCES FROM THE FEDERAL AND STATE GOVERNMENTS ARE EARMARKED AND EXPENDED TO SUPPORT THE ACTION PLANS.

THEREFORE, ALU LIKE RECOMMENDS THE FOLLOWING:

- THE ORDER OF PRIORITY FOR ACTION RECOMMENDED IN VOLUME I BE REVISED TO GIVE FIRST PRIORITY TO THE FEDERAL GOVERNMENT, SECOND TO THE STATE, THIRD TO LOCAL GOVERNMENTS AND FOURTH TO THE PRIVATE SECTOR.

THIS PRIORITY ORDER SHOULD BE MAINTAINED FOR AT LEAST THE NEXT SEVERAL YEARS OR UNTIL THE POSITIVE IMPACT IS DOCUMENTED.

- THE FEDERAL GOVERNMENT SHALL INCLUDE NATIVE HAWAIIANS IN ALL NATIVE AMERICAN PROGRAMS. (CURRENTLY, HAWAIIANS ARE INCLUDED IN FIVE MEASURES.)
- THE FEDERAL AND STATE AGENCIES SHALL EARMARK FUNDS TO PROVIDE ADDITIONAL ASSISTANCE FROM EXISTING PROGRAMS;

THE DEFINITION OF NATIVE HAWAIIAN IN FEDERAL LEGISLATION SHALL MEAN ANY INDIVIDUAL WHOSE ANCESTORS WERE NATIVES OF THE AREA WHICH CONSTITUTED THE HAWAIIAN ISLANDS PRIOR TO 1778.

NOTE: THE HAWAIIAN HOMES COMMISSION ACT OF 1920 SHALL BE EXEMPTED FROM THE "NO-QUANTUM" DEFINITION UNTIL THE FEDERAL-STATE TASK FORCE ON THE HAWAIIAN HOMES COMMISSION ACT IS RECONSTITUTED AND, IN CONSULTATION WITH THE COMMUNITY, CAN MAKE A SPECIFIC RECOMMENDATION.

2. IN VOLUME II, "FLAWS" IN THE FINDINGS AND CONCLUSIONS OF VOLUME I ARE IDENTIFIED. WE EXPECT THAT SCHOLARS IN HISTORY AND THE APPLICABLE LAWS WILL SPEAK TO THE CONCERNS FROM MANY MORE YEARS OF RESEARCH THAN ALU LIKE. THEREFORE, WE ARE NOT PREPARED TO CONCUR WITH OR REFUTE THE CONCLUSIONS MADE.

HOWEVER, WHAT IS APPARENT IS THE NEED FOR CAREFUL ANALYSIS OF THE DATA COLLECTED IN RELATION TO VOLUME I AND II AND FURTHER RESEARCH TO FILL GAPS IN DOCUMENTATION WHICH ARE A RESULT OF THE LIMITED DURATION OF THE COMMISSION'S INVESTIGATION.

IN ADDITION, THE ISSUE OF CEDED LANDS IS SIGNIFICANT TO DELIBERATIONS AND

PLANNING AT THE STATE LEVEL. COORDINATED ACTION PLANS IN THIS REGARD ARE NEEDED.

THEREFORE, ALU LIKE RECOMMENDS THE FOLLOWING:

- THE U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES AND THE U.S. HOUSE COMMITTEE ON INSULAR AND INTERIOR AFFAIRS CLARIFY THE NATURE OF THE CLAIMS BY NATIVE HAWAIIANS FOR LOSSES OF DOMAIN AND DOMINION AND DETERMINE A JUST AND EQUITABLE RESOLUTION.
- AS RECOMMENDED IN VOLUME II, PAGE 10, THE COMMITTEE CONSULT AND INVOLVE NATIVE HAWAIIANS IN THE DELIBERATIONS AND RESOLUTION OF THESE CLAIMS, AND THAT PROPOSED RESTITUTION BE SUBJECT TO FORMAL ACCEPTANCE BY NATIVE HAWAIIANS; AND

  PENDING RESOLUTION OF THESE CLAIMS THAT APPROPRIATE ACTION BE TAKEN TO MAINTAIN CURRENT USE AND STATUS OF THE LANDS CONTROLLED BY THE FEDERAL GOVERNMENT IN HAWAII AND OF THE ARCHIPELAGIC WATERS OF HAWAII.
- AS RECOMMENDED IN VOLUME II, PAGE 13, THAT THE CONGRESS ESTABLISH A JOINT FEDERAL-STATE CEDED LAND COMMISSION FOR THE STATE OF HAWAII, (1) TO REVIEW IN CONSULTATION WITH NATIVE HAWAIIANS, THE PRESENT STATUS, USE AND POSSIBLE RELEASE OF FEDERALLY-CONTROLLED CEDED LANDS IN HAWAII; AND (2) TO ADVISE CONGRESS ON THE STATUS OF THESE LANDS AND HAVE THE AUTHORITY TO DECLARE SUCH LAND SURPLUS AND AVAILABLE FOR RETURN TO THE STATE OF HAWAII.

2. IN VOLUME II, THE ATTEMPT IS MADE TO INCLUDE A DISCUSSION ON THE HAWAIIAN HOMES LAND TRUST TO DRAW CONCLUSIONS AND MAKE RECOMMENDATIONS. WE REALIZE THAT YOUR COMMITTEE, MR. CHAIRMAN, IS AWARE THAT THE FEDERAL-STATE TASK FORCE ON THE HAWAIIAN HOMES COMMISSION ACT COMPLETED A COMPREHENSIVE

REVIEW OF THE HAWAIIAN HOMES COMMISSION ACT AND SUBMITTED ITS REPORT TO THE U.S. SECRETARY OF THE INTERIOR AND THE GOVERNOR OF THE STATE OF HAWAII IN AUGUST, 1983. FURTHER, WE EXPECT THAT TESTIMONY WILL BE PROVIDED FROM THE CHAIRMAN OF THE HAWAIIAN HOMES COMMISSION DURING THESE HEARINGS.

THEREFORE, ALU LIKE COMMENDS TO YOU THE REPORT AND RECOMMENDATIONS OF THE FEDERAL-STATE TASK FORCE ON THE HAWAIIAN HOMES COMMISSION ACT.

SUMMARY

IN CONCLUSION, THE BOARD OF DIRECTORS OF ALU LIKE WISHES TO EMPHASIZE THE NEED FOR IMMEDIATE ACTION TO ADDRESS THE NEEDS AND CONCERNS OF HAWAIIANS. WE ASK THAT THE COMMITTEE, MR. CHAIRMAN, TAKE THE LEAD IN IMPLEMENTING RECOMMENDATIONS IN AS EXPEDITIOUS A MANNER AS POSSIBLE. HAWAIIANS ARE PREPARED TO TAKE A STRONG ROLE IN HELPING OURSELVES. WE ASK THAT YOU PROVIDE US THE FEDERAL RESOURCES AND LEGISLATIVE AND ADMINISTRATIVE MECHANISMS TO DO SO.

MAHALO FOR THE OPPORTUNITY TO PROVIDE THIS TESTIMONY.

APPENDIX A

Data on Hawaiians

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Rev. 3/84

DATA ON HAWAIIANS

There are approximately 175,000 Hawaiians or 19% of the population in the State of Hawaii

- Of this number, 45.3% are 19 years of age and younger. Median age is 22.8 years compared with 28.4 for the State
- Of the 463,000 adults in the State, 14% are Hawaiians
- Of the 63,000 Hawaiian adult workforce, approximately 10% are unemployed (nearly double the State level)
- Of the Hawaiian households, 39% have 5 or more persons and 35% do not have income sufficient for their family size
- Of the Hawaiian families, 15.1% are living below poverty level compared to 7.8% of total families in the State; of those in poverty in the State, more than 40% are Hawaiian; approximately 24% are on welfare
- 46% of adult inmates are Hawaiian

The life span of Hawaiians is nearly 7 years less than that of the total population in the State

- Hawaiians are among those with high incidence of cancer in the nation
- Hawaiians have the highest incidence of chronic heart trouble and diabetes in the State
- Hawaiians rank second in the State in incidences of circulatory diseases
- More than 2% of our elderly are not covered by any health or medical insurance
- Hawaiians account for 22.3% of alcohol and drug abusers and only 3.6% receive treatment
- Of the males in the State aged 15-24 who are suicides, 31% are Hawaiians

Of the 162,000 public school students in the State, 34,000 (21%) are Hawaiian

- Of the 8,000 public school teachers, only 6% are Hawaiian
- Of the 224 public schools, 25 have enrollments of 40% or more Hawaiian
- Of the 5,000 students in those intermediate/high schools, 33% have been absent 20 days or more a year
- Of the 34,000 Hawaiian students in public schools, approximately 12,900 (35-38%) are in stanines 1-3 (equal to 0-22 %ile) for SAT reading compared with 24% for the State
- Of learning disabled youth in the public schools, 1,236 or 76.5% are Hawaiian
- Of approximately 72,000 Hawaiians age 25 and older, 32% have not finished high school
- Of the college students in the State, Hawaiians comprise 11% (community college); 4% (University of Hawaii-Manoa)
- Only 8% of Hawaiians over 25 years have completed 4 or more years of college

Hawaiian youth aged 15-19 comprised about 13% of the Hawaiian population

- Of these 22,800 youth, 55% are male and 45% are female

    - Of these males, 33% of those looking for work who have not finished high school are unemployed
    - Of these females, 55% of those looking for work who have not finished high school are unemployed
- Of the youth in correctional institutions, 66% are Hawaiians
- Of all Hawaiian children, 16% are living in households with female heads compared with 7% of all children in the State

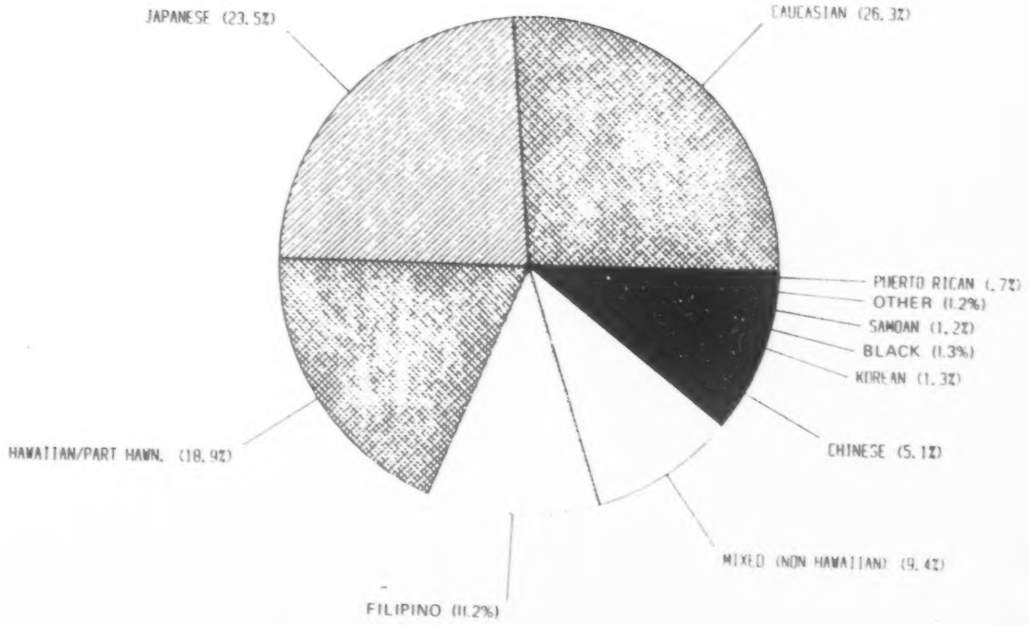
Elderly Hawaiians aged 65 and older comprise about 3% of the total Hawaiian population

- Of these 5,600 elderly Hawaiians, 46% are male and 54% are females
- Of these elderly, 8% are not registered for Medicare and 2% lack both Medicare and private health insurance
- Of the total aged 65 and older population, Hawaiian elderly have the youngest median age of 67 compared to 74 years for the State.

APPENDIX A - TABLE I

STATE OF HAWAII POPULATION

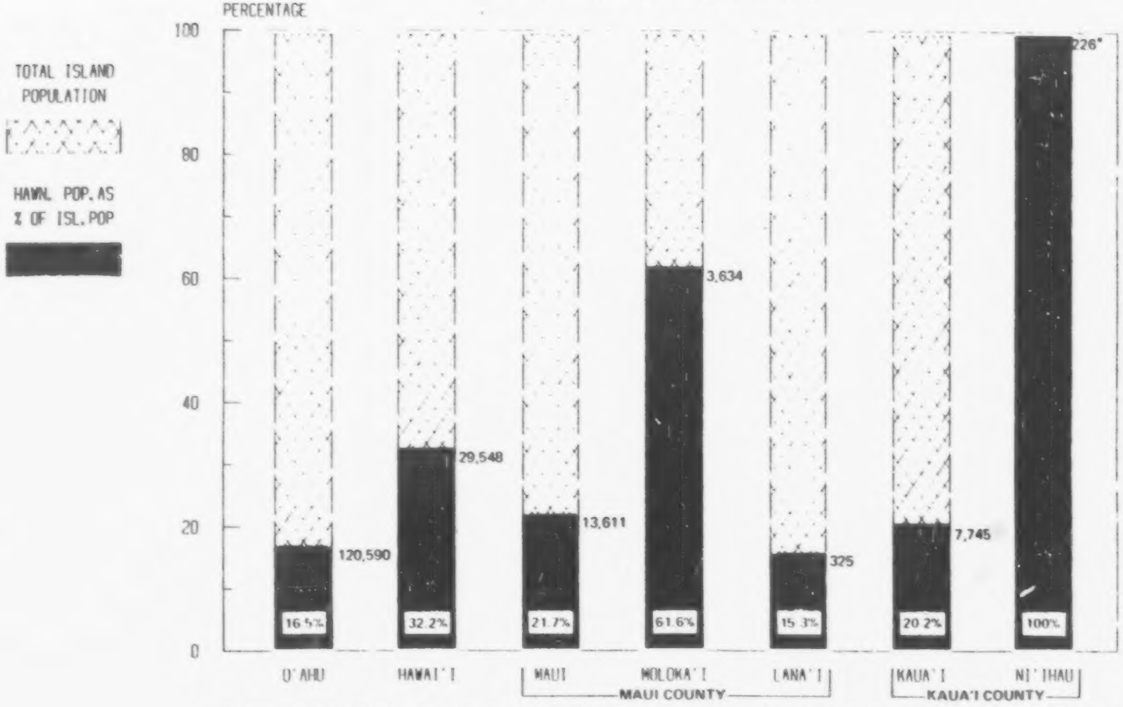
TOTAL: 930,270



APPENDIX A - TABLE 2

HAWAIIAN POPULATION

TOTAL IN 1980-175,000 (19% OF STATE POP)



- Approximately 45% of the Hawaiian population in the state is 19 years of age and younger
- The Median age for Hawaiians is 22.8 years compared to the Median age of the state of 28.4
- Of the 463,000 Adults in the state, 63,000 (14%) are Hawaiian

* From 1980 Decennial Census. Other data from DOH Health Surveillance Survey.

APPENDIX A - TABLE 2A

Number and Percent of All Hawaiians in the Population of the State of Hawaii, 1980, by Island and Age

Five-year Age Group	Hawaii		Kauai		Maui		Molokai		Lanai		Oahu		State	
	Hawaiians	Total	Hawaiians	Total	Hawaiians	Total	Hawaiians	Total	Hawaiians	Total	Hawaiians	Total	Hawaiians	Total
Under 5	4,084(52%)	7,803	994(36%)	2,779	1,721(36%)	4,756	423(71%)	592	13(13%)	104	14,340(25%)	56,766	21,575(30%)	72,800
5- 9	2,941(43%)	6,890	1,181(34%)	3,494	1,316(33%)	4,048	304(75%)	406	26(25%)	104	14,731(27%)	54,778	20,499(29%)	69,720
10-14	4,071(46%)	8,901	1,109(35%)	3,214	1,720(32%)	5,414	625(82%)	761	52(33%)	156	14,894(24%)	61,137	22,471(28%)	79,583
15-19	3,994(53%)	7,543	1,121(31%)	3,629	2,125(39%)	5,465	592(73%)	811	39(19%)	208	15,898(24%)	65,928	23,769(28%)	83,584
20-24	2,608(46%)	5,623	402(18%)	2,278	1,518(33%)	4,655	254(68%)	372	*	117	9,582(14%)	70,990	14,364(17%)	84,035
25-29	1,959(27%)	7,349	457(17%)	2,765	1,215(21%)	5,769	152(41%)	372	26(33%)	78	8,447(12%)	69,821	12,256(14%)	86,154
30-34	1,829(26%)	6,964	407(15%)	2,796	506(10%)	5,111	152(60%)	253	13(33%)	39	8,130(13%)	62,572	11,037(14%)	77,735
35-39	1,115(22%)	5,062	606(24%)	2,529	860(24%)	3,643	169(56%)	304	26(22%)	117	6,984(16%)	44,051	9,760(18%)	55,712
40-44	1,436(37%)	3,894	241(13%)	1,866	607(19%)	3,238	220(57%)	389	39(19%)	208	6,556(18%)	36,585	9,099(20%)	46,180
45-49	1,052(21%)	5,032	364(16%)	2,224	506(17%)	2,985	169(71%)	237	*	65	4,436(13%)	34,182	6,527(15%)	44,725
50-54	1,316(24%)	5,489	203(11%)	1,793	607(15%)	4,149	101(38%)	270	13(7%)	195	4,238(11%)	37,277	6,478(13%)	49,173
55-59	945(18%)	5,168	255(10%)	2,480	253(6%)	3,997	84(33%)	253	26(18%)	143	2,403(7%)	36,631	3,966(8%)	48,672
60-64	495(12%)	4,321	223(13%)	1,694	50(2%)	2,682	169(67%)	253	26(22%)	117	2,991(9%)	32,965	3,954(9%)	42,032
65-69	700(16%)	4,272	36(2%)	1,994	202(8%)	2,631	51(25%)	203	26(10%)	260	3,236(12%)	26,005	4,251(12%)	35,365
70-74	316(11%)	3,016	36(3%)	1,346	152(11%)	1,417	68(25%)	270	*	117	1,693(11%)	15,702	2,265(10%)	21,868
75 & Over	528(21%)	2,526	92(8%)	1,222	101(6%)	1,822	84(83%)	101	*	91	1,191(6%)	18,699	1,996(8%)	24,461
Unknown	159(12%)	1,362	18(11%)	166	152(19%)	810	17(33%)	51	*	*	840(14%)	6,082	1,186(14%)	8,471
All Ages	29,548(32%)	91,221	7,745(20%)	38,269	13,611(22%)	62,592	3,634(62%)	5,898	325(15%)	2119	120,590(17%)	730,171	175,453(19%)	930,270

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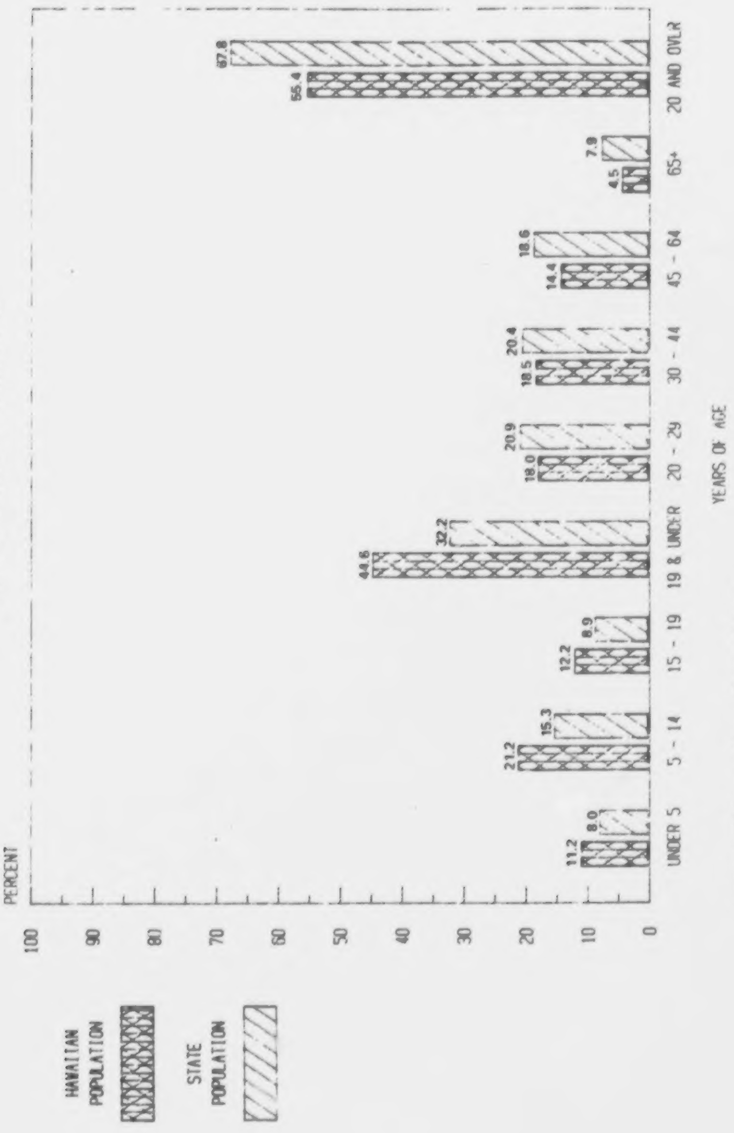
*Number too small to be sampled in the Survey.

Source: Data generated for ALU LIKE from the ongoing Health Survey of the Health Surveillance Program of the Hawaii State Department of Health, September, 1981.

APPENDIX A - TABLE 3

HAWN VS. STATE POPULATION BY AGE GROUP

SOURCE: 1980 DECENNIAL CENSUS, B.O.C.



Source: 1980 Decennial Census, Bureau of Census

APPENDIX A - TABLE 3A

Native Hawaiians and Part-Hawaiians in the State of Hawaii, 1980, by Age

Age Group	Native Hawaiians*		Part-Hawaiians		All Hawaiians		Total State Population
	No.	Pct.	No.	Pct.	No.	Pct.	
Under 5	1,665	2.3%	19,910	27.3%	21,575	29.6%	72,800
5- 9	2,204	3.2	18,295	26.2	20,499	29.4	69,720
10-14	3,083	3.9	19,388	24.4	22,471	28.2	79,583
15-19	4,005	4.8	19,764	23.6	23,769	28.4	83,584
20-24	3,484	4.1	10,880	12.9	14,364	17.1	84,035
25-29	3,892	4.5	8,364	9.7	12,256	14.2	86,154
30-34	3,822	4.9	7,215	9.3	11,037	14.2	77,735
35-39	4,153	7.5	5,607	10.1	9,760	17.5	55,712
40-44	4,204	9.1	4,895	10.6	9,099	19.7	46,180
45-49	3,178	7.1	3,349	7.5	6,527	14.6	44,725
50-54	3,035	6.2	3,443	7.0	6,478	13.2	49,173
55-59	1,951	4.0	2,015	4.1	3,966	8.1	48,672
60-64	2,243	5.3	1,711	4.1	3,954	9.4	42,032
65-69	1,941	5.5	2,310	6.5	4,251	12.0	35,365
70-74	1,282	5.9	983	4.5	2,265	10.4	21,868
75 & Over	1,260	5.2	736	3.0	1,996	8.2	24,461
Unknown	425	5.0	761	9.0	1,186	14.0	8,471
All Ages	45,827	4.9	129,626	13.9	175,453	18.9	930,270

Source: Data generated for ALU LIKE from the ongoing Health Survey of the Health Surveillance Program of the Hawaii State Department of Health, September, 1981.

*Native Hawaiians = 50% or more Hawaiian ancestry.

APPENDIX A - TABLE 3B

Number and Percent of Children Aged 3-5 in the State of Hawaii Population Who Are Native Hawaiian

County	Total Number of Children Aged 3-5 in State	Native Hawaiian Children Aged 3-5	
		Number	Percent
Kauai	1,920	782	40.7%
Hawaii	3,899	1,932	49.6
Maui	3,333	1,380	41.4
Honolulu	34,064	10,351	30.4
TOTAL	43,216	14,445	33.4

Source: Data generated by Hawaii State Department of Health, Health Surveillance Program, April 1980.

APPENDIX A - TABLE 3C

Number and Percent of Native Hawaiian Children in the Headstart Program (aged 3-5) in the State of Hawaii by County, April, 1980

County	Total Number of Children in Program	Native Hawaiian Children in Program	
		Number	Percent
Kauai	80	31	38.6%
Hawaii	160	70	43.8
Maui	122	65	53.3
Honolulu	701	410	58.5
TOTAL	1,063	576	54.2

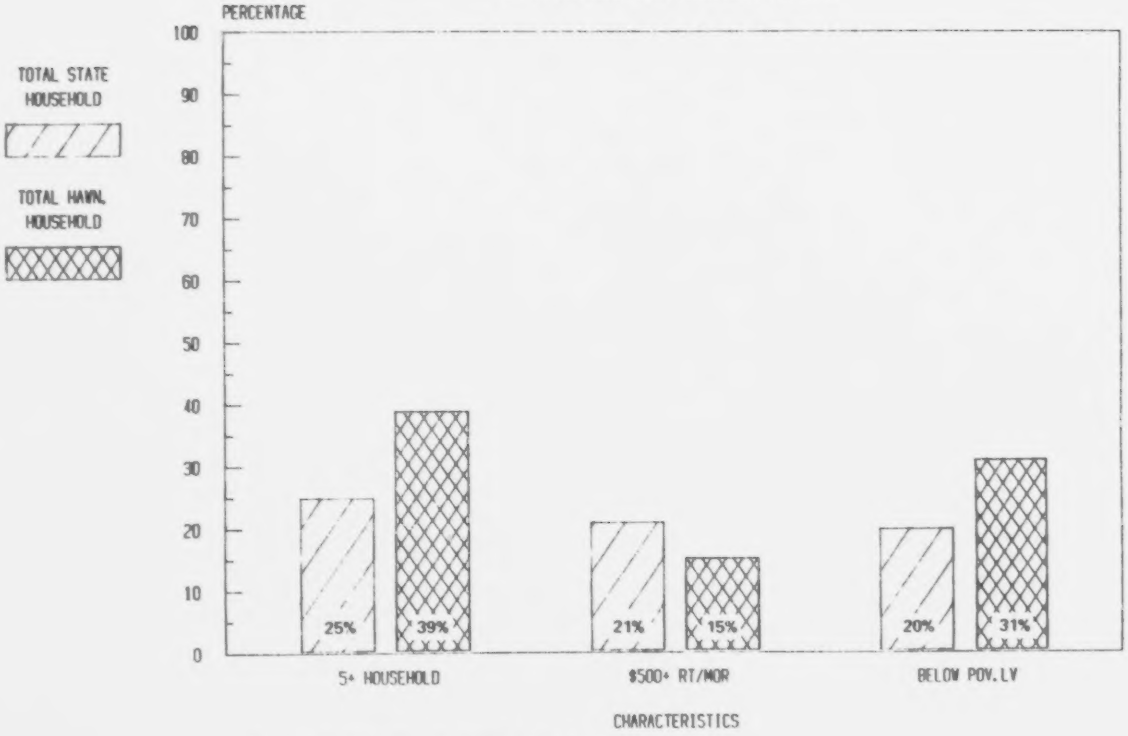
Note: Of those aged 3-5 in the total State population, 33.4% are Native Hawaiian (see attached table). However, a larger percentage of the Native Hawaiian families with pre-school children have income below $4,000 annually (9.1%) compared to non-Hawaiians (5.8%). Also, there are more female heads of households for Native Hawaiians than for the State population (13.1% versus 8.6%).

Source: Data obtained from County offices of the Hawaiian Office of Economic Opportunity, April, 1980

APPENDIX A - TABLE 4

HAWAIIAN HOUSEHOLD ECONOMIC CONCERNS

5+ HSHLD./$500+ RENT.MORT./BELOW POV.LVL

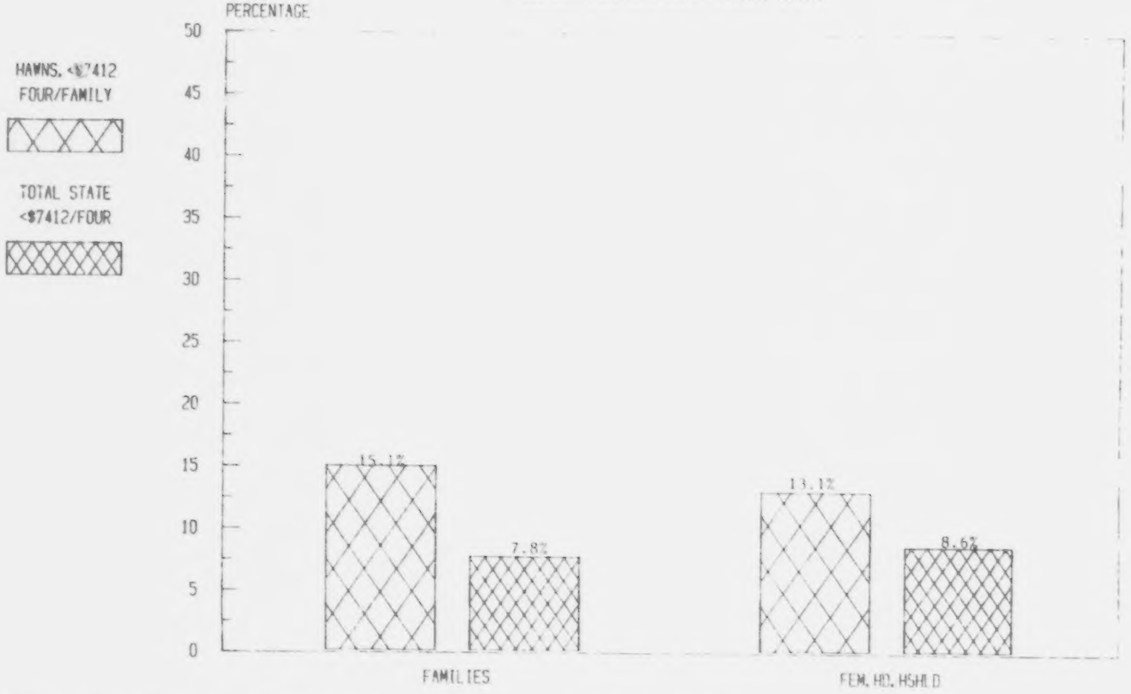


Sources: The Native Hawaiian Housing Study, ALU LIKE, 1980
Detailed Housing Characteristics: Hawaii Bureau of the Census, 1980

APPENDIX A - TABLE 4-A

POVERTY LEVEL FAMILIES

SOURCE: 1980 DECENNIAL CENSUS, B.U.C.



* Note: Under $7,412. for family of four.
Source: 1980 Decennial Census, Bureau of Census.

APPENDIX A - TABLE 4B

Hawaiian Heads of Household Who Were Served by Programs at the Hawaii Housing Authority, FY1982

HHA Program	Hawaiian Heads of Household No.	Hawaiian Heads of Household Pct.	Total Number Served
Section 8 Existing	383	25.9	1,477
Section 8 New Construction	11	11.0	100
Elderly (Federal Low Rent)	76	6.2	1,221
Federal Low Rent	834	24.8	3,365
Rent Supplement	228	17.0	1,340
State Housing	118	23.3	506
Others*	120	34.6	347
TOTAL	1,770	21.2	8,356

*Includes programs under Act 105 Rentals, Section 236, Farm Worker Housing, DOT Housing.

Note: According to the 1980 Decennial Census, 15.1% of the Hawaiian families lived under the poverty level compared to 7.8% of the total families in the State.

Source: Data obtained from the Hawaii Housing Authority, December 1983, from its Composite Report, July 1, 1981 - June 30, 1982.

APPENDIX A - TABLE 5

Hawaiian Clients as a Percentage of Total Clients Who Received Title XX Social Services for FY 1983

Services Provided	Hawaiian Clients No.	Hawaiian Clients Pct.	Total Number of Clients
Adoption	15	12.5%	120
Chore service	145	12.8	1,129
Day care	357	40.7	878
Employment	46	21.4	215
Foster care	463	19.2	2,414
Health support	23	29.5	78
Homemaker	21	18.6	113
Casework	566	24.5	2,310
Protection	799	27.1	2,952
Social rehabilitation	18	26.5	68
TOTAL	2,456	23.9	10,282

Note: According to the 1980 Decennial Census, 15.1% of the Hawaiian families lived under the poverty level compared to 7.8% of the total families in the State.

Source: Data obtained from the State Department of Social Services and Housing, December, 1983.

APPENDIX A - TABLE 5A

Barriers of Hawaiian and Total Clients Receiving Title XX Social Services in FY1983

Client Barrier*	Hawaiian Clients		Total Number of Clients
	No.	Pct.	
Child abuse	546	27.5%	1,983
Child neglect	246	26.1	942
Runaway child	3	13.6	22
Total disability	71	20.4	348
Blindness	3	42.9	7
Mental retardation	49	21.6	227
Alcohol abuse	1	16.7	6
Employment problem	155	34.2	453
Absence of spouse	21	25.0	81
Adoption problem	15	17.9	84
Health	30	20.3	148
Social	3	11.1	27
Unwed mothers	2	28.6	7
Advance age disability	277	12.2	2,263
Adult abuse/neglect	2	13.3	15
Institutional care problem	0	0.0	1
Family problem	526	34.4	1,529
Unwanted pregnancy	1	50.0	2
Other	6	7.2	83
TOTAL	1,957	23.8	8,228

Note: According to the 1980 Decennial Census, 45.3% of the Hawaiian population are under 19 years of age compared to 32.2% for the total population in the State.

Source: Data obtained from the State Department of Social Services and Housing, December, 1983.

* Barrier refers to a problem or condition that actually or potentially prevents achievement or maintenance of a desirable goal state.

APPENDIX A - Table 6

HAWAIIAN HEALTH CONCERNS

HAWAIIANS HAVE HIGHER MORTALITY RATE THAN THE STATE POPULATION

Figure 1: Cause of Death - All Causes

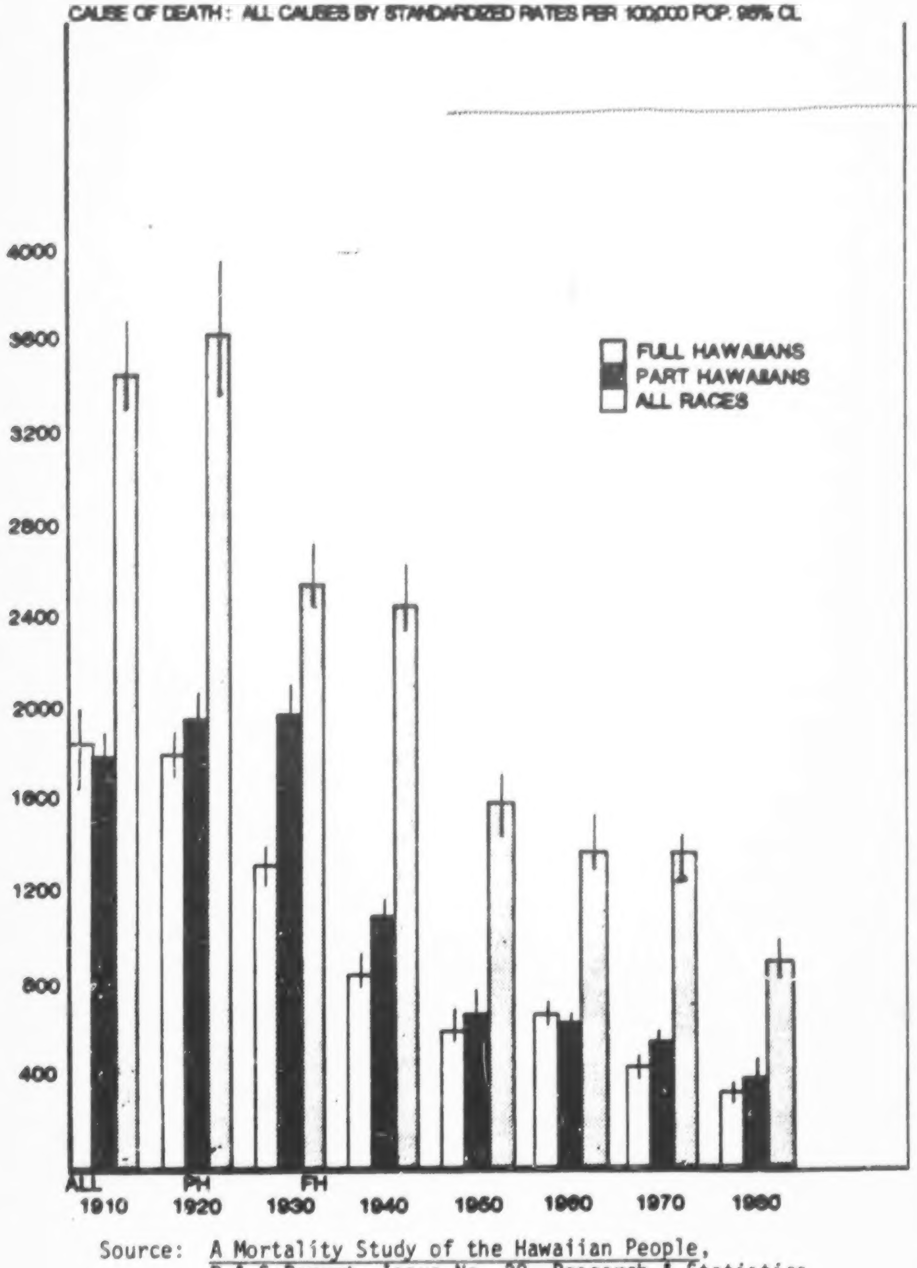
HAWAIIANS HAVE HIGHER RATES FOR THE THREE LEADING CHRONIC DISEASES

Figure 2: Diseases of the Heart
3: All Cancers
4: Diabetes Mellitus

HAWAIIANS HAVE SHORTER LIFE EXPECTANCY THAN THE STATE POPULATION

Figure 5: Male/Female Life Expectancy at Birth

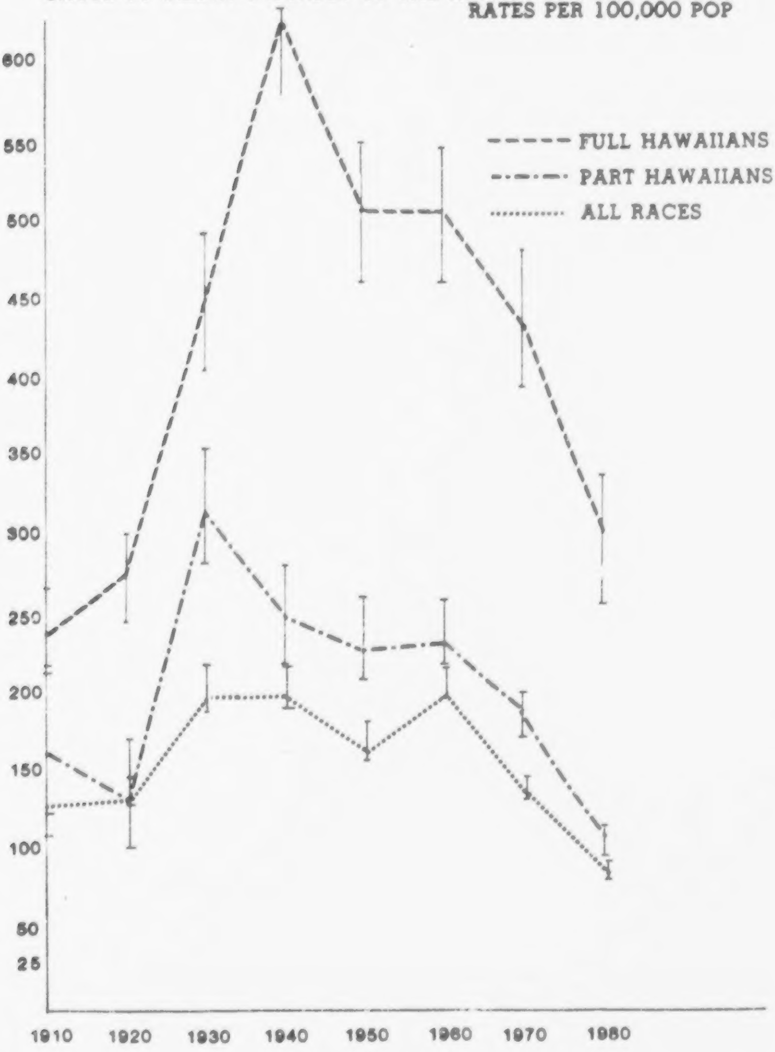
FIGURE 1 of 5


CAUSE OF DEATH: ALL CAUSES BY STANDARDIZED RATES PER 100,000 POP. 95% CL

Source: A Mortality Study of the Hawaiian People, R & S Report, Issue No. 38, Research & Statistics Office, Hawaii State Department of Health, February 1982

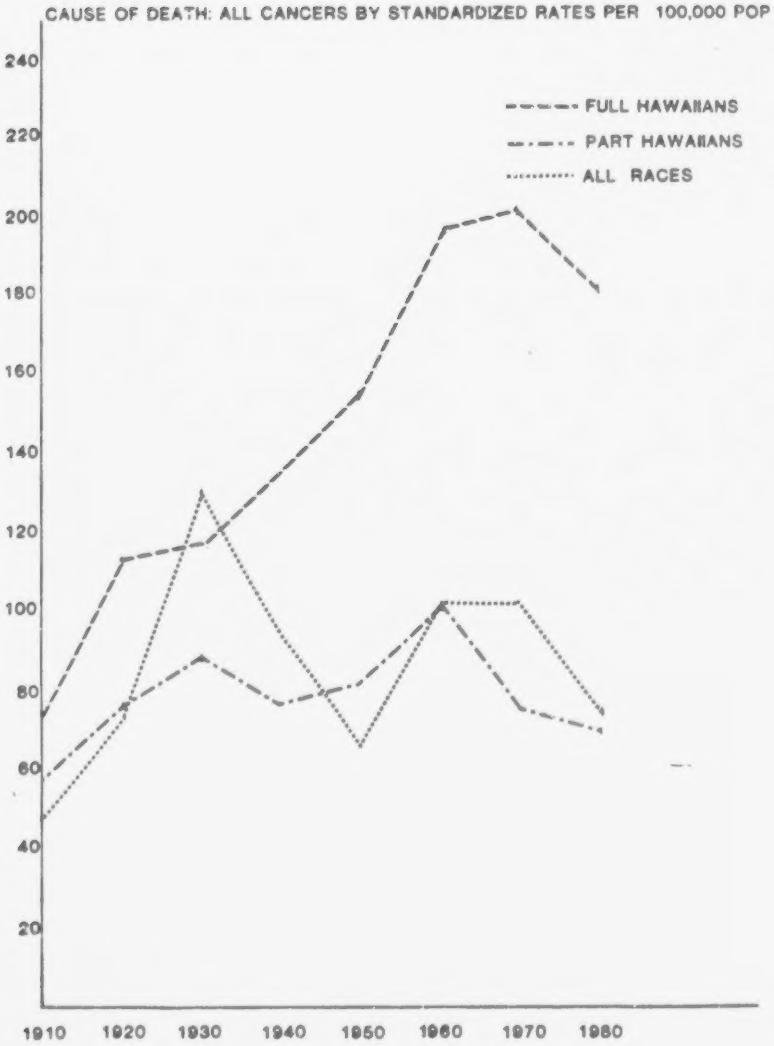
FIGURE 2 of 5

CAUSE OF DEATH: DISEASES OF THE HEART BY STANDARDIZED RATES PER 100,000 POP



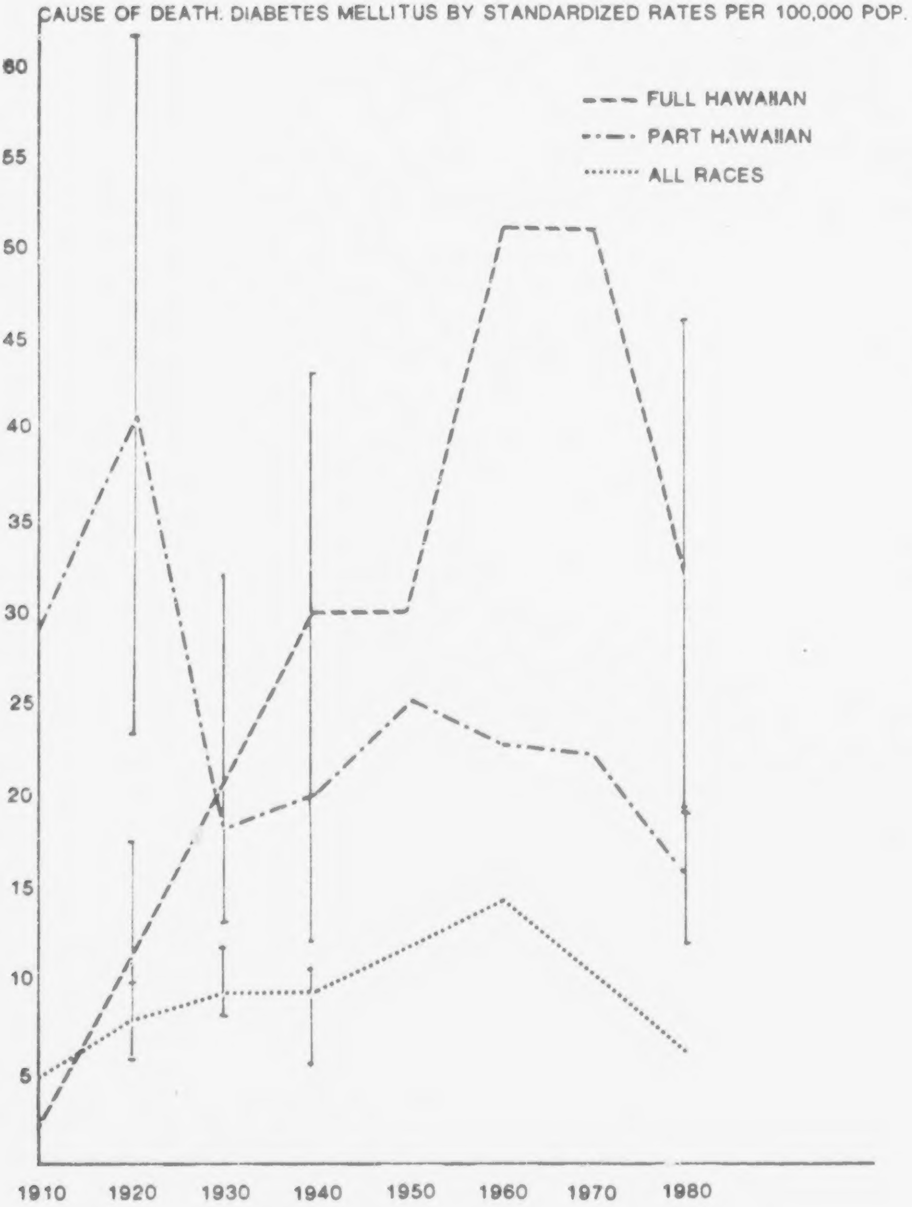
Source: A Mortality Study of the Hawaiian People, R & S Report, Issue No. 38, Research & Statistics Office, Hawaii State Department of Health, February 1982

FIGURE 3 of 5



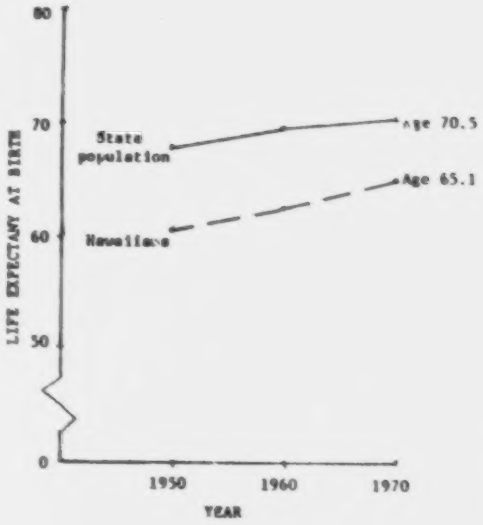
Source: A Mortality Study of the Hawaiian People,
R & S Report, Issue No. 38, Research & Statistics
Office, Hawaii State Department of Health,
February 1982

FIGURE 4 of 5

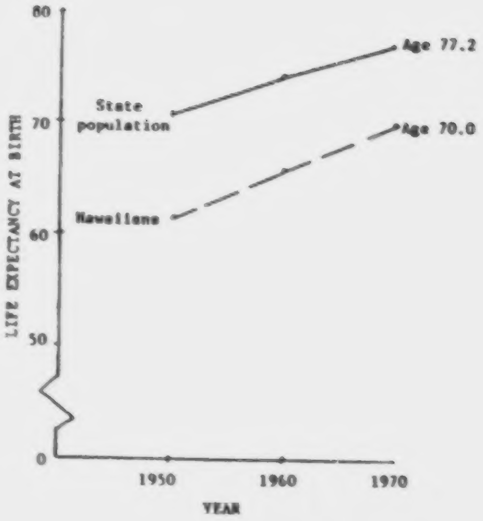


Source: A Mortality Study of the Hawaiian People,
R & S Report, Issue No. 38, Research & Statistics
Office, Hawaii State Department of Health,
February 1982

FIGURE 5 of 5



MALE LIFE EXPECTANCY AT BIRTH, HAWAII

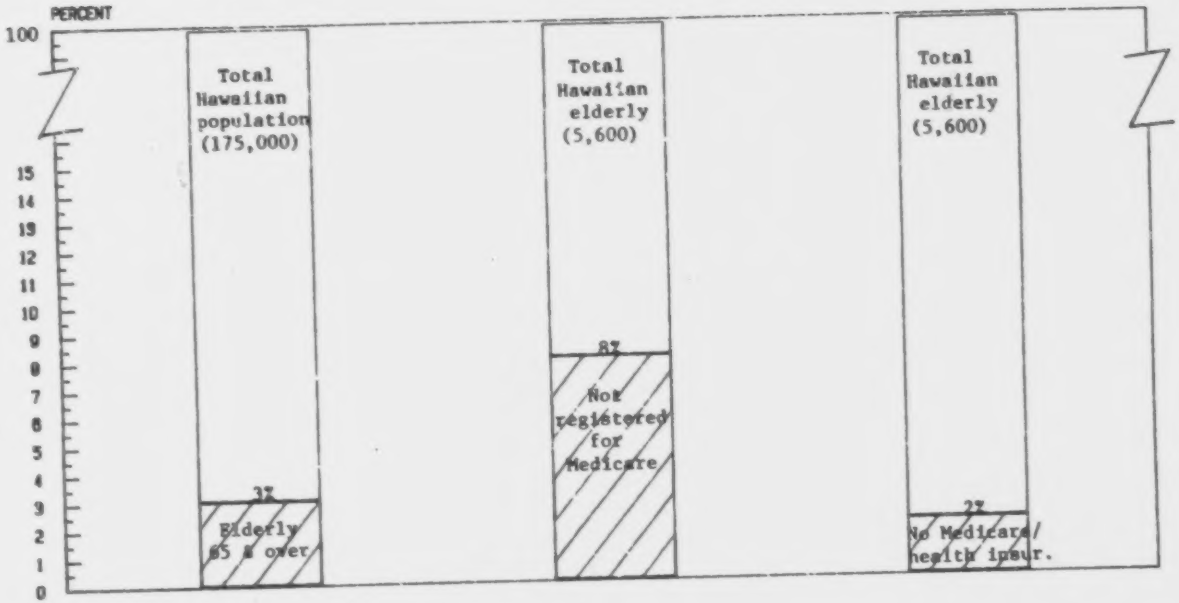


FEMALE LIFE EXPECTANCY AT BIRTH, HAWAII

Source: Life Tables by Ethnic Groups for Hawaii, R & S Report, Issue No. 26, Research & Statistics Office, Hawaii State Department of Health, June 1979.

APPENDIX A - Table 6A

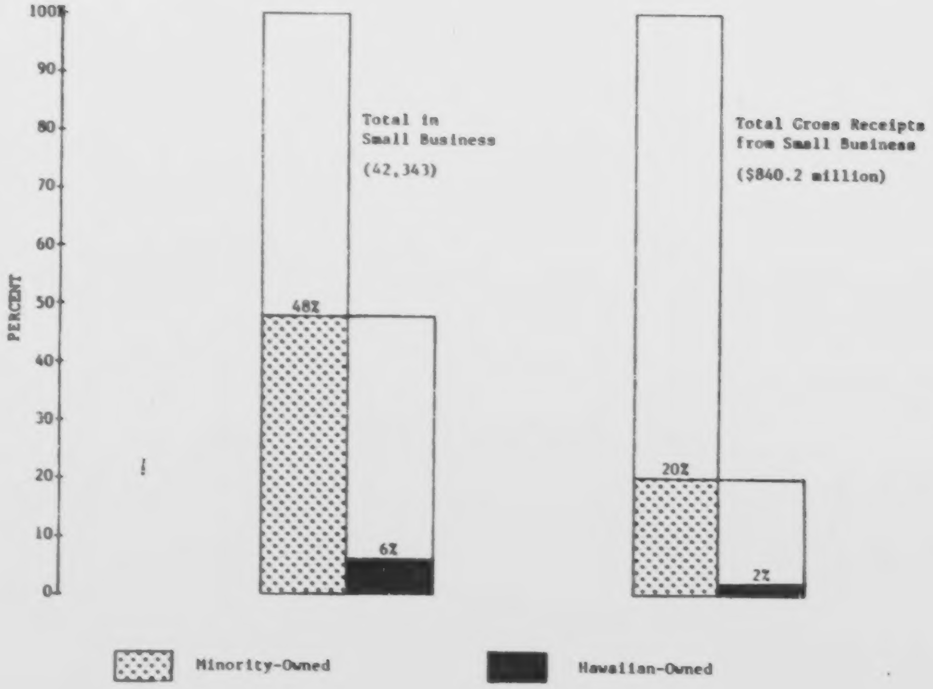
HAWAIIAN ELDERLY CONCERNS



Source: Study of Medicare and Health Insurance Coverage among Elderly Native Hawaiians, Research & Statistics Unit, ALU LIKE, Inc., Honolulu, Hawaii, September 1977.

APPENDIX A - TABLE 7

HAWAIIAN ECONOMIC DEVELOPMENT CONCERNS



Sources: The State of Hawaii Data Book, 1980 (data for 1977) and
1977 Survey of Minority-Owned Business Enterprises, Bureau of the Census, 1980.

APPENDIX A - TABLE 7A

Hawaiian Clients as a Percentage of Total Clients Served by the Small Business Administration in FY1983

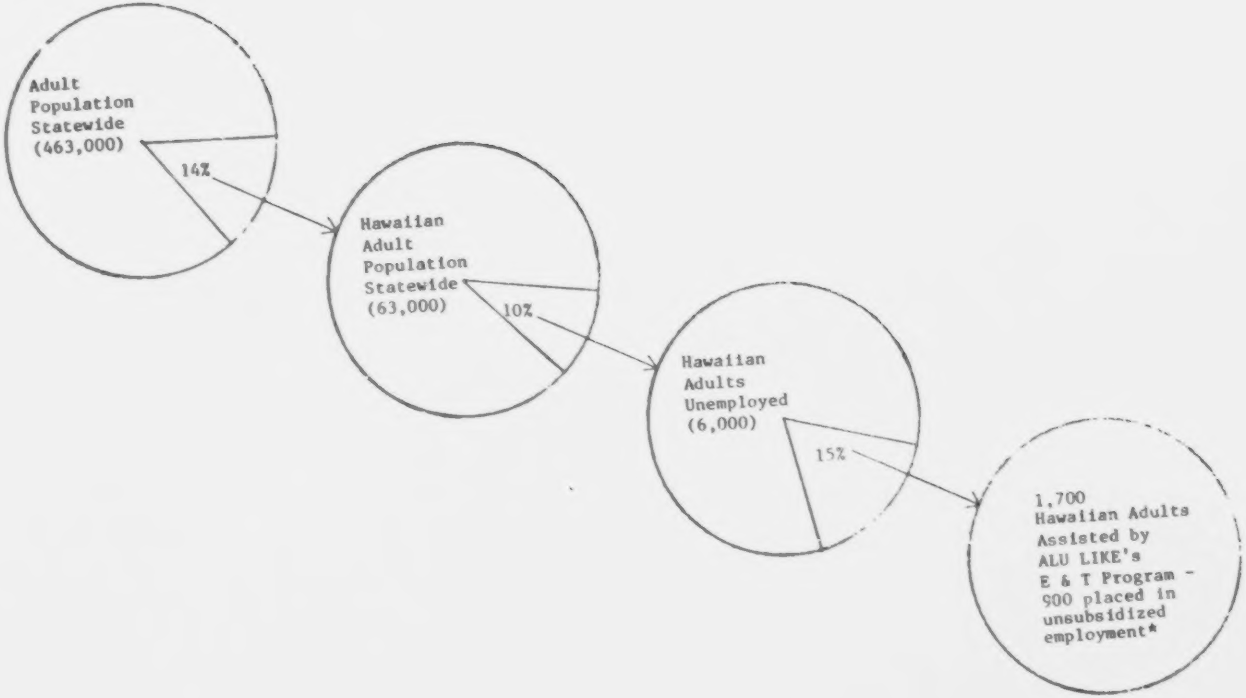
SBA Program	Hawaiian Clients No.	Hawaiian Clients Pct.	Total Number of Clients
Economic Opportunity Loans	1	20.0	5
Technical & Development Assistance	10	22.2	45
MBDA Capital Opportunities Loans	0	0.0	17
MBDA Management & Technical Assistance	8	5.4	148

Note: According to the 1980 Decennial Census, 15.1% of the Hawaiian families lived under the poverty level compared to 7.8% of the total families in the State.

Sources: Data obtained from the Small Business Administration and from its MBDA contractor, the U.S. Human Resources Corporation, December 1983.

APPENDIX A - TABLE 8

HAWAIIAN EMPLOYMENT CONCERNS

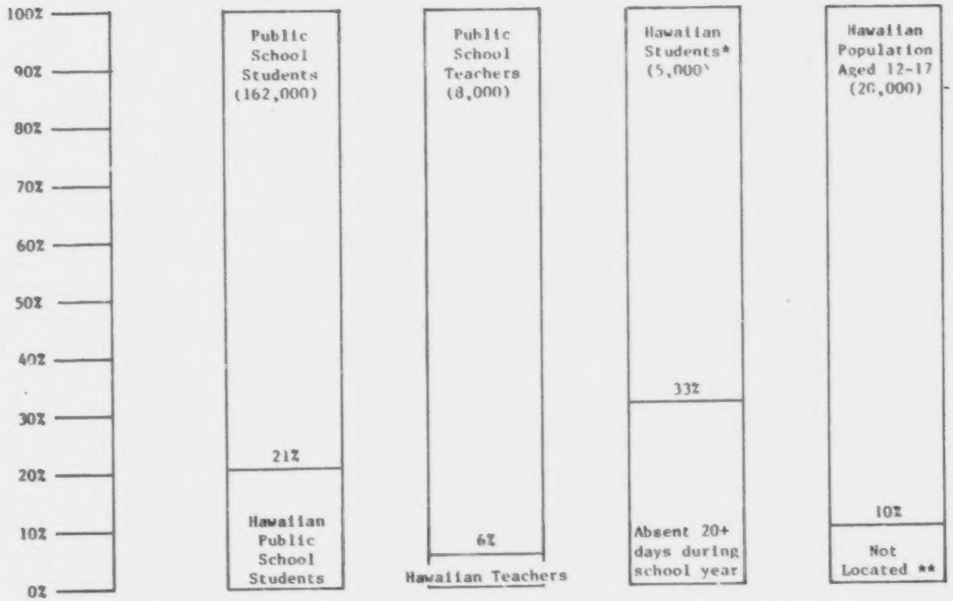

Adult
Population
Statewide
(463,000)
14%
Hawaiian
Adult
Population
Statewide
(63,000)
10%
Hawaiian
Adults
Unemployed
(6,000)
15%
1,700
Hawaiian Adults
Assisted by
ALU LIKE's
E & T Program -
900 placed in
unsubsidized
employment*

*Include E & T participants as of December 1980.

Sources: Estimates generated by ALU LIKE from 1979 DOH data, and OEO data, extrapolated for 1980.

APPENDIX A - TABLE 9

HAWAIIAN EDUCATION CONCERNS



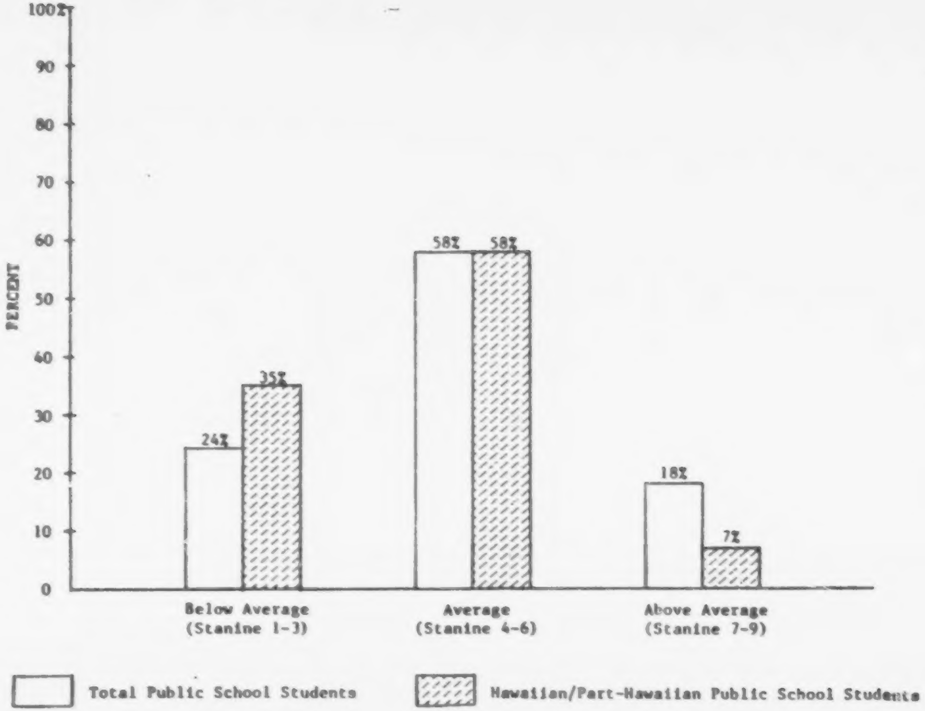
*Hawaiian Students = Hawaiian/Part-Hawaiian students in 16 Public, Intermediate and High School with over 40% Hawaiian/Part-Hawaiian enrollment.

**Estimates of Hawaiian population aged 12-17 minus Hawaiian Public and Private Intermediate and High School students. (Mobility of population, including military dependents, and other factors may reduce this percentage)

Source: Estimates generated by Alu Like based on 1979 data.

APPENDIX A - TABLE 9A

COMPARISON OF S.A.T. READING SCORES FOR TOTAL AND HAWAIIAN PUBLIC SCHOOL STUDENTS, 1980

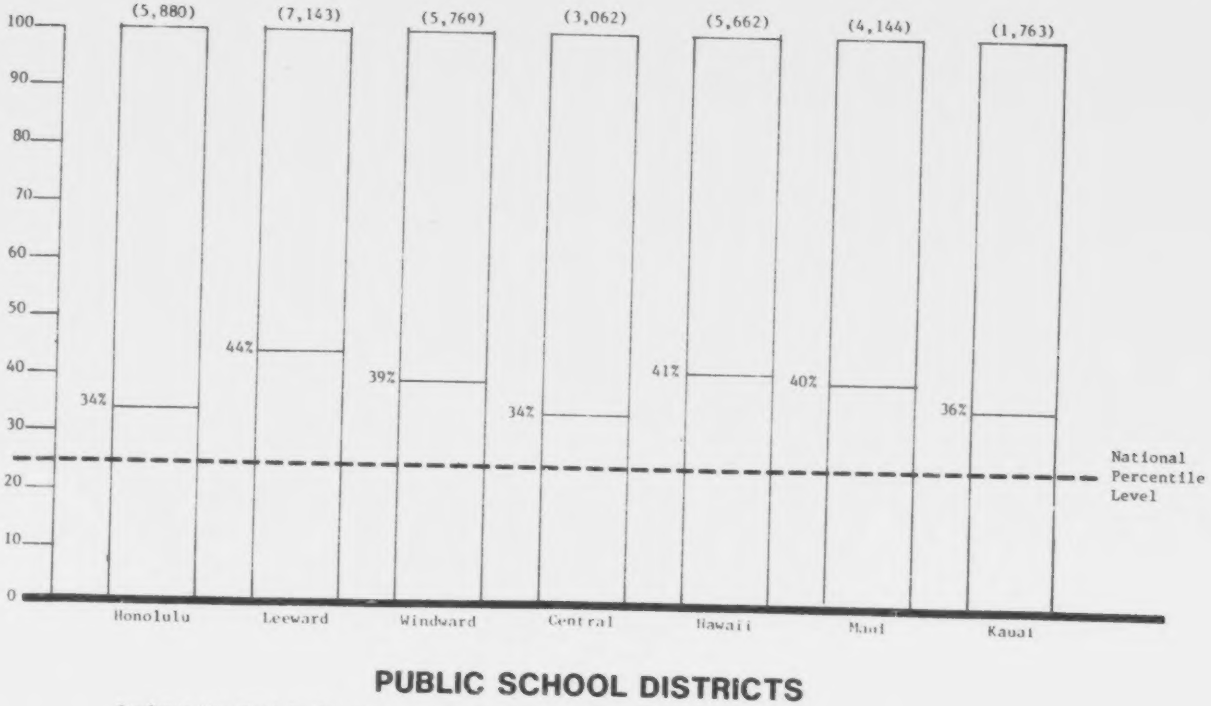


Source: The Kamehameha Schools Needs Assessment Update, 1980.

APPENDIX A - TABLE 9B

HAWAIIAN STUDENTS IN PUBLIC SCHOOLS WHO NEED EDUCATIONAL ASSISTANCE

(with S.A.T. Reading Scores in Stanines 1-3)

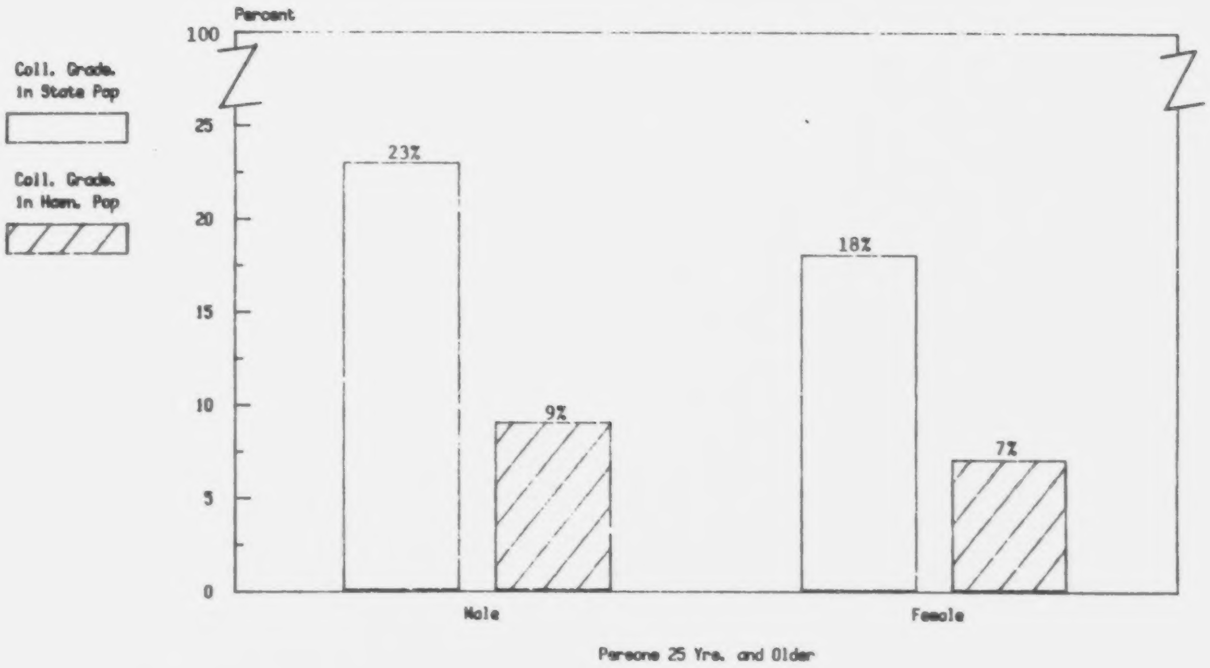


Students Who Need Assistance

Source: The Kamehameha Schools Needs Assessment Update, 1980

APPENDIX A - Table 9C

HAWAIIAN HIGHER EDUCATION CONCERNS

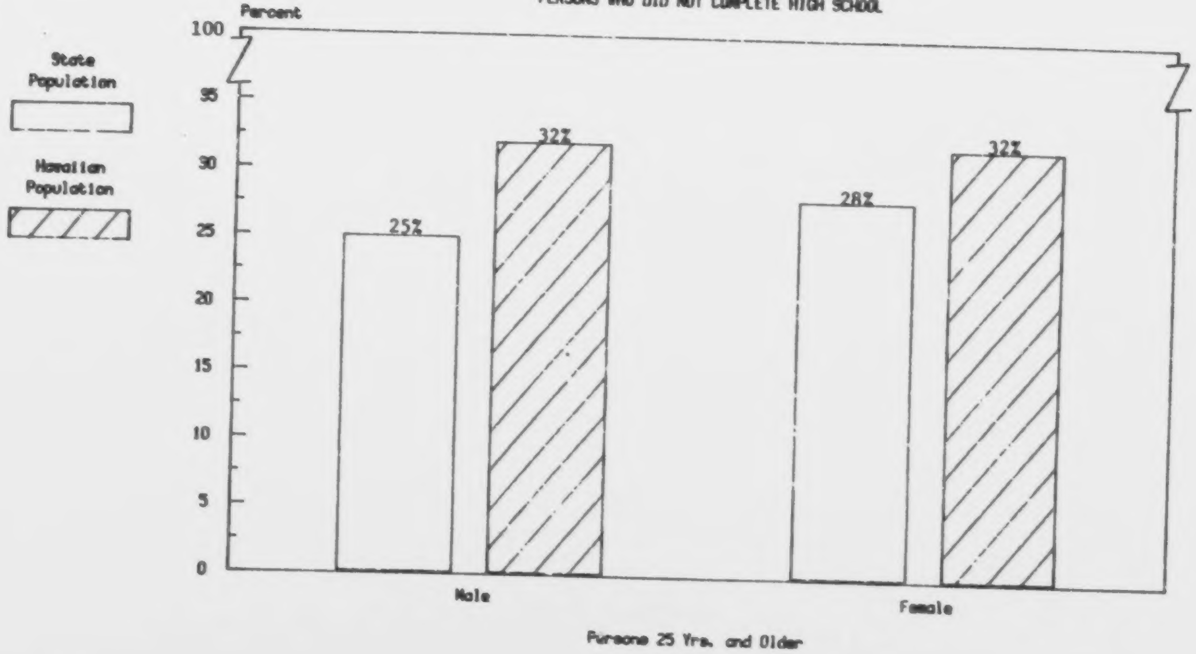


Source: 1980 Census of Population, General Social and Economic Characteristics: Hawaii, PC80-1-C13, Bureau of the Census, Washington DC, June 1983.

APPENDIX A - Table 9D

HAWAIIAN EDUCATION CONCERNS

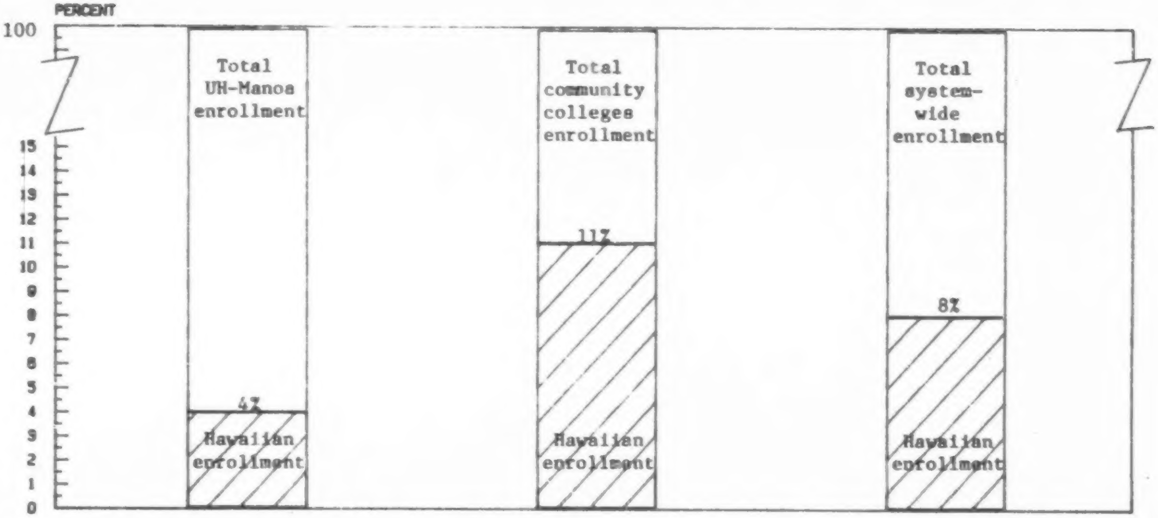
PERSONS WHO DID NOT COMPLETE HIGH SCHOOL



Source: 1980 Census of Population, General Social and Economic Characteristics: Hawaii, PC80-1-C13, Bureau of the Census, Washington DC, June 1983.

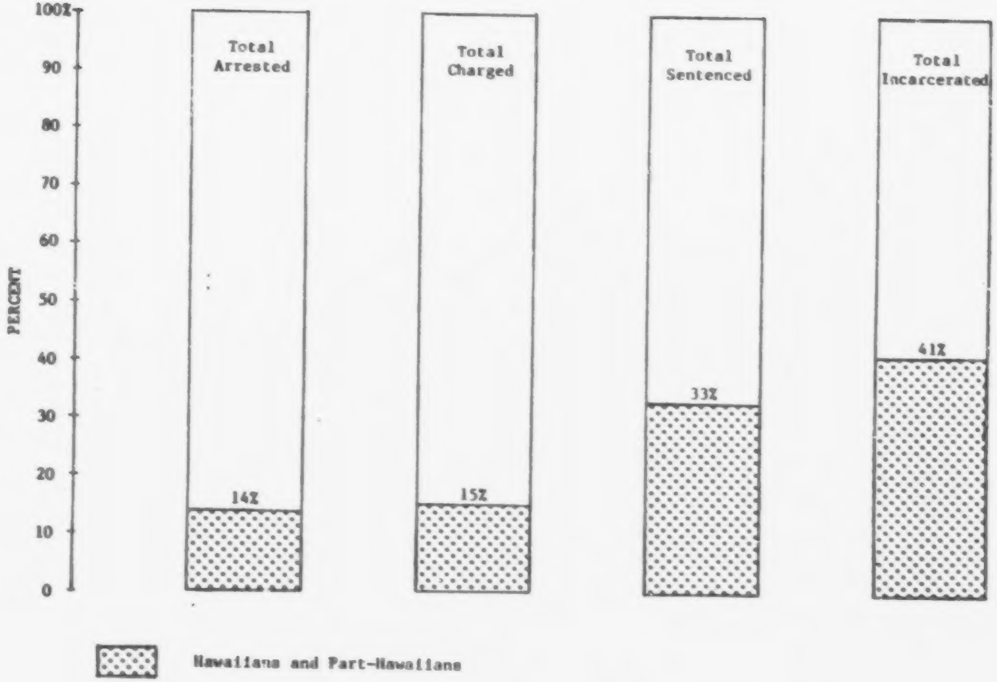
APPENDIX A - Table 9E

HAWAIIAN HIGHER EDUCATION CONCERNS



Source: Summary of Revised Estimates of Underrepresentation of Filipino and Hawaiian Enrollments at the University of Hawaii, Department of Sociology, University of Hawaii at Manoa, March 1983.

APPENDIX A - Table 10
HAWAIIAN CRIMINAL JUSTICE CONCERNS



Source: Crime and Justice Related to Native Hawaiians in the State of Hawaii, ALU LIKE, 1980.

Note: No data file is available to track the same cohort from Arrest to Incarceration; these statistics are from three data files ranging from 1975-1980.

Senator **Matsunaga**. Our next witness is Ms. Hoaliku Drake. Hoaliku, are you here? I know her personally, but is she here? I don't see her.

OK. Then we'll go next to the chairman of the Princess Bernice Pauahi Bishop Estate, Mr. Richard Lyman.

STATEMENT OF RICHARD LYMAN, JR., CHAIRMAN, BOARD OF TRUSTEES, KAMEHAMEHA SCHOOLS/BISHOP ESTATE

Mr. **Lyman**. Thank you, Mr. Chairman. You are a magician. Only this morning, I was told that was No. 22 on the list of 60, and now, how did I get here?

However, I do appreciate the opportunity, and because of the interest of time, I'm merely going to say, thank you for giving me this opportunity to speak on behalf of volume II, not I. The trouble is, for too long, we have been educated by the haole, and as you know, haoles—ha means breath; ole means nothing. So it means, a dead man.

Now, Mr. Chairman, I think no one—no one—can understand what it means to be a Hawaiian, unless you are a Hawaiian or have worked and lived with Hawaiians. Then you can understand the feeling of the people, such as you have here today. As Hawaiians, we're sick and tired of reading in the newspapers, Hawaiians are No. 1 in jail, and No. 1 in welfare. They're No. 1 in everything that's not worth while. And when it comes to things not worth while, they're No. 1 on the list again. Now, looking at these ladies, maybe they wouldn't be able to pass an aptitude test determined by haoles. But they have more mana than 10 haoles would ever have in Hawaii.

And so, Mr. Chairman, you have about 49 other people, and you don't want to have to stay up until midnight, so I'm going to summarize by saying, thank you. Thank you very much for this opportunity, and here are the remarks that I would have read if I had the opportunity.

[The prepared statement of Mr. Lyman follows:]

The Honorable Spark M. Matsunaga and Members of the United States Senate Committee on Energy and Natural Resources and the Committee on Interior and Insular Affairs of the United States House.

My name is Richard Lyman, Jr.

I am one of the trustees and Chairman of the Board of Trustees, Kamehameha Schools/Bishop Estate; a member of the Board of Directors of Kaulana Na Pua Institute, Inc.; a citizen of the United States of America and of the State of Hawaii.

I am a keiki hanau o ka aina (a child born of the land).

My ancestors came from the four corners of the world. America, Italy, England, China and the last but not the least from aboriginal stock of these islands.

The Hawaiians have suffered much from some of the tactics of the white man in this paradise.

As Americans some of our leaders cannot understand that we can not interfere with established governments without suffering the penalties of defeat.

I speak of aiding and abetting people here who overthrew and stole the established government and its lands before the turn of this century--I speak of our last queen, Liliuokalani, and her overthrow. The results are history.

Today our country is doing the same thing in other lands. We cannot be the land of the free and the home of the brave if we keep on acting the way we did in Hawaii 90 years ago.

I beg that you support our Study Commission and reject the findings of the members urging that you disregard the findings of the final report, Volume I and support the position of the report referred to as Volume II which refutes the inaccuracies of Volume I, final report.

Only by the rejection of the findings of Volume I and the adoption of the findings of Volume II will the American people have the opportunity of looking into the eyes of the world and saying yes there still is freedom and justice for all.

Yes, America needs a boost and maybe it may require us to humble ourselves and admit--not deny that we as a people were guilty of stealing an established government recognized by all civilized nations of the world at the time of the overthrow by revolutionists inspired and led by our forces and abetted by the U. S. Forces in Hawaii at that time.

As a member of the Hawaiian community, I support the Resolution submitted by Kaulani Na Pua Institute, Inc., in its entirety to reject enumerated sections of the final report of the Native Hawaiian Study Commission, Volume I.

Richard Lyman

Testimony of Richard Lyman, Jr.
April 16, 1984

Senator MATSUNAGA. Your written statement will appear in the record in full, and in the event you wish to edit your oral remarks, we will gladly allow it.

Our next speaker is Miss Helen Nagtalon-Miller, of the Hawaii Advisory Committee, U.S. Commission on Civil Rights.

STATEMENT OF HELEN R. NAGTALON-MILLER, CHAIR, HAWAII STATE ADVISORY COMMITTEE, U.S. COMMISSION ON CIVIL RIGHTS

Ms. NAGTALON-MILLER. Senator Matsunaga, Representative Akaka, staff members and fellow participants. Good afternoon.

I'm Helen Nagtalon-Miller. At present, I am the Chair of the Hawaii State Advisory Committee to the U.S. Commission on Civil Rights.

I'd like to introduce Mr. Jeffrey Wallace, who's here from Los Angeles, who's the representative for Hawaii from that office.

Members of the committee are private, uncompensated volunteers who are appointed by the Commission. The State advisory committee assists the Civil Rights Commission in its factfinding, fact-dissemination and clearinghouse functions.

In 1979, the Hawaii Advisory Committee undertook a project to collect information on the administration, management, and enforcement of the Hawaiian Home Commission Act of 1920. Our project included a public forum and a summary report which was published in October 1980. It was entitled "Breach of Trust? Native Hawaiian Homelands." [1]

This report was submitted to the U.S. Commission on Civil Rights for its information and consideration. While the report reached no conclusions and made no recommendations, it did state the committee's hope that those responsible for implementing the homeland trust would use the report "to better fulfill their respective duties." The committee also stated that it would continue to monitor the progress of homeland trust programs.

Since 1980, the committee has undertaken no new projects of its own in this area, but committee members have followed closely the work of the Native Hawaiians Study Commission. We have observed that information contained in both majority and minority reports of the Commission confirm information presented to us at our public forum in 1979 that there have been significant failures in implementation of the Hawaiian Homes Commission Act over the past 60 years.

This afternoon, I will provide an insight into State-Federal responsibility for administration and enforcement of the Hawaiian Homes Commission Act; and later my colleague from Maui, Charles Maxwell from that island, will discuss the background and findings of our project.

In 1921, Congress enacted the Hawaiian Homes Commission Act which established a trust consisting of more than 200,000 acres in the territory of Hawaii for the use and benefit of native Hawaiians. This trust was administered by the Federal Government under the Hawaiian Homes Commission, which was empowered to lease parcels of land under the trust to native Hawaiians at nominal rates. When Hawaii was granted statehood under the Hawaii Admission Act of 1959, the Homeland Act became part of State law.

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[1] Report retained in committee files.

And now, I'll turn to page 6 of my report, the last paragraph.

Despite some ambiguity, the argument that only the State is responsible for administration and enforcement of the trust is contrary to actions of the United States and statutory provisions.

First, because the Hawaiian Homes Commission Act was never repealed by Congress, but merely remains "omitted" from the U.S. Statutory Code. This may signify that Congress did not intend that the act lost is Federal "nature."

Second, and more important, the United States has exhibited a longstanding conding continuing trust relationship with native Hawaiians. The Homelands Act is evidence of Federal recognition of native Hawaiians affairs since 1920. This recognition was reiterated by Congress in the Hawaii Admission Act of 1959, which authorized the State to adopt the act, and granted the United States the right to sue the State for breaches of the trust and unilateral amendment or repeal of the homelands legislation.

I will now go down to the bottom of page 7.

Third, the Congress has historically retained power above the States over the affairs of native Americans. Therefore, the transfer of the trust's management and ownership of trust lands to the State does not imply that Congress has given away its protection of native Hawaiian interests; it does imply that Congress intended to grant Hawaii statehood on an equal footing with other States by giving it ownership and management of State lands.

Finally, statutory provisions in the Homelands Act and the Admission Act show that the United States has not relinquished its control over the Hawaiian Homes Program. These provisions give the Federal Government review powers over State operations.

And I go down to the last paragraph of that page.

Unlike the provisions reserving the Federal Government's right to sue, which may or may not involve a duty to bring suit, administrative powers given to the Secretary of the Interior directly involve the United States in trust operations.

Under the Homelands Act, the Secretary is responsible for approving land exchanges under the trust. He or she also is authorized to appoint a person from the Department of the Interior to assist the State in carrying out its duties. Since this authorization is contained in an administrative provision of the Homelands Act which may be amended by the State legislature without U.S. consent, it is not clear what effect Congress intended by this provision when the trust was conveyed to the State.

The State of Hawaii, through the department of Hawaiian home lands, and the Federal Government share responsibility for the administration and enforcement of the Hawaiian Homes Commission Act. As a fiduciary, the State owes a duty to native Hawaiians as beneficiaries of the trust properly to administer and enforce the trust. On the other hand, the United States has an historical and statutory obligation to ensure that the State fulfills its obligations as trustee of the Hawaiian homelands. The Federal Government's right to sue the State for breaches of the trust and the unilateral amendemnt or repeal of trust provisions give it ultimate authority over enforcement. The administrative duties imposed on the Secretary of the Interior directly involve the Federal Government in trust operations and give it review powers over state administration of the trust.

This ends my testimony delivered as Chair of the Hawaii State Advisory Committee. The Hawaii committee did not address the majority and minority reports per se. However, as an individual member of the committee, I urge that all of you do everything in your power to seek enforcement of all policies and laws in regard to Hawaiian homelands.

Also, I urge you not to be lured into accepting the findings and interpretations of the majority report without further considering the political, economic and social responsibility of the United States for native Hawaiians.

Thank you.

[The prepared statement of Ms. Nagtalon-Miller follows:]

TESTIMONY

U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
BY
HELEN R. NAGTALON-MILLER, PH.D.
CHAIR, HAWAII STATE ADVISORY COMMITTEE
U.S. COMMISSION ON CIVIL RIGHTS

STATE AND FEDERAL RESPONSIBILITY FOR ADMINISTRATION AND ENFORCEMENT OF THE HAWAIIAN HOMES COMMISSION ACT

APRIL 16, 1984

GOOD MORNING.

I AM HELEN NAGTALON-MILLER. AT PRESENT I AM THE CHAIR OF THE HAWAII STATE ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS. MEMBERS OF THE COMMITTEE ARE PRIVATE, UNCOMPENSATED VOLUNTEERS WHO ARE APPOINTED BY THE COMMISSION. THE STATE ADVISORY COMMITTEE ASSISTS THE CIVIL RIGHTS COMMISSION IN ITS FACT-FINDING, FACT-DISSEMINATION, AND CLEARINGHOUSE FUNCTIONS.

IN 1979, THE HAWAII ADVISORY COMMITTEE UNDERTOOK A PROJECT TO COLLECT INFORMATION ON THE ADMINISTRATION, MANAGEMENT, AND ENFORCEMENT OF THE HAWAIIAN HOMES COMMISSION ACT OF 1920. OUR PROJECT INCLUDED A PUBLIC FORUM AND A SUMMARY REPORT WHICH WAS PUBLISHED IN OCTOBER, 1980. IT WAS ENTITLED, "BREACH OF TRUST? NATIVE HAWAIIAN HOMELANDS."

THIS REPORT WAS SUBMITTED TO THE U.S. COMMISSION ON CIVIL RIGHTS FOR ITS INFORMATION AND CONSIDERATION. WHILE THE REPORT REACHED NO CONCLUSIONS AND MADE NO RECOMMENDATIONS, IT DID STATE THE COMMITTEE'S HOPE THAT THOSE RESPONSIBLE FOR IMPLEMENTING

THE HOMELAND TRUST WOULD USE THE REPORT "TO BETTER FULFILL THEIR RESPECTIVE DUTIES." THE COMMITTEE ALSO STATED THAT IT WOULD CONTINUE TO MONITOR THE PROGRESS OF HOMELAND TRUST PROGRAMS. SINCE 1980, THE COMMITTEE HAS UNDERTAKEN NO NEW PROJECTS OF ITS OWN IN THIS AREA, BUT COMMITTEE MEMBERS HAVE FOLLOWED CLOSELY THE WORK OF THE NATIVE HAWAIIANS STUDY COMMISSION. WE HAVE OBSERVED THAT INFORMATION CONTAINED IN BOTH "MAJORITY" AND "MINORITY" REPORTS OF THE COMMISSION CONFIRM INFORMATION PRESENTED TO US AT OUR PUBLIC FORUM IN 1979 THAT THERE HAVE BEEN SIGNIFICANT FAILURES IN IMPLEMENTATION OF THE HAWAIIAN HOMES COMMISSION ACT OVER THE PAST 60 YEARS.

THIS MORNING, I WILL PROVIDE AN INSIGHT INTO STATE AND FEDERAL RESPONSIBILITY FOR ADMINISTRATION AND ENFORCEMENT OF THE HAWAIIAN HOMES COMMISSION ACT AND LATER, MY COLLEAGUE FROM MAUI, CHARLES MAXWELL, WILL DISCUSS THE BACKGROUND AND FINDINGS OF OUR PROJECT.

IN 1921, CONGRESS ENACTED THE HAWAIIAN HOMES COMMISSION ACT WHICH ESTABLISHED A TRUST CONSISTING OF MORE THAN 200,000 ACRES IN THE TERRITORY OF HAWAII FOR THE USE AND BENEFIT OF NATIVE HAWAIIANS. THIS TRUST WAS ADMINISTERED BY THE FEDERAL GOVERNMENT UNDER THE HAWAIIAN HOMES COMMISSION WHICH WAS EMPOWERED TO LEASE PARCELS OF LAND UNDER THE TRUST TO NATIVE HAWAIIANS AT NOMINAL RATES. WHEN HAWAII WAS GRANTED STATEHOOD UNDER THE HAWAII ADMISSION ACT OF 1959, THE HOMELAND ACT BECAME PART OF STATE LAW.

WHILE IT IS STATE LAW, THE ADMISSION ACT STATES THAT IT CANNOT BE AMENDED OR REPEALED WITHOUT THE CONSENT OF CONGRESS, WITH THE EXCEPTION OF CERTAIN PROVISIONS DEALING WITH ADMINISTRATIVE MATTERS. FOR EXAMPLE, THE ADMISSION ACT SPECIFIES THAT SECTION 220 MAY BE AMENDED BY THE STATE LEGISLATURE. THIS SECTION, UNDER THE 1920 ACT, AUTHORIZES THE HAWAIIAN HOMES COMMISSION TO UNDERTAKE WATER AND OTHER DEVELOPMENT PROJECTS WITH RESPECT TO TRUST LANDS. THAT SECTION HAS BEEN AMENDED SO THAT IT NOW AUTHORIZES THE DEPARTMENT OF HAWAIIAN HOMES LANDS, A STATE AGENCY, TO UNDERTAKE THE SAME DEVELOPMENT PROJECTS. UNLIKE THE 1920 VERSION, THE LATEST WORDING AUTHORIZES THE GRANTING OF RIGHTS-OF-WAY FOR PIPELINES, DITCHES, ETC., AND ALLOWS THE DEPARTMENT TO EXCHANGE HAWAIIAN HOME LANDS FOR PUBLIC LANDS TO CARRY OUT SUCH WATER PROJECTS. THESE CHANGES WERE MEANT TO BE ADMINISTRATIVE RATHER THAN CHANGES INVOLVING THE STRUCTURE AND GOALS OF THE TRUST OR ITS BASIC TERMS, SUCH AS LANDS AVAILABLE UNDER THE TRUST, THE EXCHANGE OF TITLE TO AVAILABLE LANDS FOR PUBLIC LANDS, LIMITATIONS ON LEASING AND SALES, GRANTING OF LICENSES, CONDITIONS OF LEASES, AND SUCCESSORS TO NATIVE HAWAIIAN LESSEES. FURTHER, THE ADMISSION ACT EXPRESSLY PROHIBITS THE REDUCTION OR IMPAIRMENT BY STATE AMENDMENT OF THE HAWAIIAN HOME-LOAN FUND, THE HAWAIIAN HOME-OPERATING FUND, AND THE HAWAIIAN HOME-DEVELOPMENT FUND. THE ADMISSION ACT ALSO STATES THAT NO ENCUMBRANCES AUTHORIZED TO BE PLACED ON TRUST LANDS MAY BE INCREASED, EXCEPT WITH THE CONSENT OF THE UNITED STATES.

THE STATE ALSO CANNOT UNILATERALLY AMEND THE TRUST TO DISQUALIFY NATIVE HAWAIIANS FROM TRUST BENEFITS, NOR CAN IT AMEND THE LEGISLATION'S DEFINITION OF THE TERM "NATIVE HAWAIIAN."

UNDER THE HAWAII ADMISSION ACT, THE STATE OF HAWAII IS GIVEN OWNERSHIP OF THE TRUST LANDS SET UP UNDER THE HAWAIIAN HOMES COMMISSION ACT, AND IS SUBSTITUTED IN PLACE OF THE UNITED STATES AS TRUSTEE.

THE HAWAII REVISED STATUTES, TITLE 4, SECTION 26 (1959) GIVE MANAGEMENT RESPONSIBILITY OF THE TRUST TO THE STATE'S DEPARTMENT OF HAWAIIAN HOME LANDS.

THEREFORE, THE DEPARTMENT OF HAWAIIAN HOME LANDS, HEADED BY THE HAWAIIAN HOMES COMMISSION, EXERCISES ADMINISTRATIVE POWERS OVER THE TRUST LANDS. SOME OF THESE POWERS INCLUDE THE RIGHT TO LEASE TRUST LANDS AND GRANT LICENSES, TO DETERMINE ELIGIBILITY OF NATIVE HAWAIIANS FOR PARTICIPATION IN THE TRUST'S PROGRAM (E.G., TO DETERMINE WHETHER NATIVE HAWAIIANS WILL PERFORM CONDITIONS IN LEASES), AND TO ENSURE COMPLIANCE WITH THE CONDITIONS IN LEASES BY NATIVE HAWAIIANS OBTAINING USE OF TRUST LANDS.

THE HOMELANDS ACT AND THE ADMISSION ACT DO NOT SPELL OUT THE STATE'S ENFORCEMENT RESPONSIBILITIES AS TRUSTEE OF THE HAWAIIAN HOME LANDS; HOWEVER, UNDER GENERAL LAW A TRUSTEE IS A FIDUCIARY WHO OWES TRUST BENEFICIARIES THE DUTY TO CARRY OUT TERMS OF THE TRUST. IN THE CASE KEAUKAHA-PANAEWA COMMUNITY ASSOCIATION V. HAWAIIAN HOMES COMMISSION, THE UNITED STATES DISTRICT COURT IN 1976 MADE CERTAIN CONCLUSIONS OF LAW CONCERNING THE FIDUCIARY DUTIES OF THE STATE TOWARD HAWAIIAN BENEFICIARIES OF THE ACT. THESE ARE:

1. TO EXERCISE SUCH CARE AND SKILL IN THE MANAGEMENT OF THE HAWAIIAN HOME LANDS AS A PERSON OF ORDINARY PRUDENCE WOULD EXERCISE IN DEALING WITH HIS OWN PROPERTY.
2. TO ADHERE TO THE TERMS OF THE TRUST EMBODIED IN THE HAWAIIAN HOMES COMMISSION ACT.
3. TO ACT EXCLUSIVELY IN THE INTEREST OF NATIVE HAWAIIANS, THE TRUST BENEFICIARIES.
4. TO HOLD AND PROTECT THE TRUST PROPERTY FOR THE TRUST BENEFICIARIES (EMPHASIS ADDED).

THUS, THE STATE HAS BOTH ENFORCEMENT AND ADMINISTRATIVE RESPONSIBILITIES FOR TRUSTEES.

WHILE THE STATE RETAINS BOTH RESPONSIBILITIES, THE UNITED STATES HAS RESERVED CERTAIN POWERS UNDER THE ADMISSIONS ACT TO SEE THAT THE PROVISIONS OF THE HOMELANDS ACT ARE CARRIED OUT. AS DISCUSSED EARLIER, THE ADMISSIONS ACT STATES THAT PROVISIONS OF THE HOMELANDS ACT CANNOT BE AMENDED WITHOUT THE CONSENT OF CONGRESS. FURTHER, UNDER THE ACT, THE U.S. SECRETARY OF THE INTERIOR HAS THE RESPONSIBILITY TO APPROVE ANY EXCHANGE OF LANDS BETWEEN THE DEPARTMENT OF HAWAIIAN HOME LANDS AND THE STATE; THIS PROVISION CANNOT BE AMENDED WITHOUT U.S. CONSENT. SECTION 5(f) OF THE ADMISSION ACT ALSO PROVIDES, IN REFERRING TO MANAGEMENT OF HAWAIIAN HOME LANDS, FOR "THE BETTERMENT OF THE CONDITIONS OF NATIVE HAWAIIANS.":

> SUCH LANDS...SHALL BE MANAGED AND DISPOSED OF [BY THE STATE] FOR...THE FOREGOING PURPOSES...AND THEIR USE FOR ANY OTHER

> OBJECT SHALL CONSTITUTE A BREACH OF TRUST
> FOR WHICH SUIT MAY BE BROUGHT BY THE
> UNITED STATES (EMPHASIS ADDED).

WHETHER THE UNITED STATES HAS RESPONSIBILITY FOR ADMINISTRATION AND ENFORCEMENT OF THE TRUST TO THE SAME EXTENT AS THE STATE IS OPEN TO INTERPRETATION. ACCORDING TO THE LEGAL AID SOCIETY OF HAWAII IN A 1978 MEMORANDUM TO THE U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, THE RESERVATION OF POWERS BY THE U.S. SIGNIFIES THAT THE STATE'S POWERS OVER THE TRUST ARE SUBJECT TO "THE OBLIGATION OF THE UNITED STATES TO GUARANTEE THAT THE TRUST RESPONSIBILITIES...[ARE] FAITHFULLY CARRIED OUT." ON THE OTHER HAND, THE U.S. APPEALS COURT IN THE KEAUKAHA-PANAEWA COMMUNITY ASSOCIATION SUIT CITED PREVIOUSLY STATED, "CLEARLY, THE ADMISSION ACT WAS INTENDED TO TRANSFER COMPLETE OWNERSHIP AND RESPONSIBILITY OF THE [HAWAIIAN HOMES] COMMISSION ACT PROGRAM AND THE HOME LANDS TO HAWAII." WHILE THE APPEALS COURT ACKNOWLEDGED THE PLAINTIFF'S ARGUMENT THAT THE HAWAIIAN HOMES COMMISSION ACT IS TECHNICALLY STILL FEDERAL LAW (IT HAS NEVER BEEN FORMALLY REPEALED BY CONGRESS), IT CONCLUDED THAT RIGHTS UNDER THE TRUST ARE STATE, NOT FEDERAL, RIGHTS BY NATURE, SINCE THE TRUST PROGRAM WAS TURNED OVER TO THE STATE IN 1959.

DESPITE SOME AMBIGUITY, THE ARGUMENT THAT ONLY THE STATE IS RESPONSIBLE FOR ADMINISTRATION AND ENFORCEMENT OF THE TRUST IS CONTRARY TO ACTIONS OF THE UNITED STATES AND STATUTORY PROVISIONS. FIRST, BECAUSE THE HAWAIIAN HOMES COMMISSION ACT

WAS NEVER REPEALED BY CONGRESS, BUT MERELY REMAINS "OMITTED" FROM THE U.S. STATUTORY CODE, THIS MAY SIGNIFY THAT CONGRESS DID NOT INTEND THAT THE ACT LOSE ITS FEDERAL "NATURE." SECOND, AND MORE IMPORTANT, THE UNITED STATES HAS EXHIBITED A LONG-STANDING, CONTINUING TRUST RELATIONSHIP WITH NATIVE HAWAIIANS. THE HOMELANDS ACT IS EVIDENCE OF FEDERAL RECOGNITION OF NATIVE HAWAIIAN AFFAIRS SINCE 1920. THIS RECOGNITION WAS REITERATED BY CONGRESS IN THE HAWAII ADMISSION ACT OF 1959 WHICH AUTHORIZED THE STATE TO ADOPT THE ACT, AND GRANTED THE UNITED STATES THE RIGHT TO SUE THE STATE FOR BREACHES OF THE TRUST AND UNILATERAL AMENDMENT OR REPEAL OF THE HOMELANDS LEGISLATION. ACCORDING TO THE PETITION FOR A WRIT OF CERTIORARI IN THE KEAUKAHA-PANAEWA COMMUNITY ASSOCIATION CASE:

> [THE] RESERVATIONS OF FEDERAL CONTROL OVER THE HAWAIIAN HOMES PROGRAM DEMONSTRATE CONCLUSIVELY THAT THE HAWAIIAN HOMES COMMISSION ACT IS A FEDERAL STATUTE AND THAT THERE IS A STRONG CONTINUING FEDERAL INTEREST IN THE PROPER ADMINISTRATION OF THE TRUST WHICH CONGRESS CREATED IN RECOGNITION OF THE UNITED STATES' OBLIGATIONS TO NATIVE HAWAIIANS.

THIRD, CONGRESS HAS HISTORICALLY RETAINED POWER ABOVE THE STATES OVER THE AFFAIRS OF NATIVE AMERICANS. THEREFORE, THE TRANSFER OF THE TRUST'S MANAGEMENT AND OWNERSHIP OF TRUST LANDS TO THE STATE DOES NOT IMPLY THAT CONGRESS HAS GIVEN AWAY ITS PROTECTION OF NATIVE HAWAIIAN INTERESTS; IT

DOES IMPLY THAT CONGRESS INTENDED TO GRANT HAWAII STATEHOOD ON AN EQUAL FOOTING WITH OTHER STATES BY GIVING IT OWNERSHIP AND MANAGEMENT OF STATE LANDS.

FINALLY, STATUTORY PROVISIONS IN THE HOMELANDS ACT AND THE ADMISSION ACT SHOW THAT THE UNITED STATES HAS NOT RELINQUISHED ITS CONTROL OVER THE HAWAIIAN HOMES PROGRAM. THESE PROVISIONS GIVE THE FEDERAL GOVERNMENT REVIEW POWERS OVER STATE OPERATIONS. AGAIN, THESE STATUTORY PROVISIONS INCLUDE:

1. THE UNITED STATES RETAINS THE RIGHT TO UNILATERALLY AMEND OR REPEAL THE HOMELANDS ACT.
2. CONGRESS RETAINS THE RIGHT TO UNILATERALLY AMEND OR REPEAL THE HOMELANDS ACT.
3. CONGRESS PROHIBITS SUBSTANTIVE AMENDMENTS TO THE HAWAIIAN HOMES COMMISSION ACT WITHOUT ITS APPROVAL.
4. THE APPROVAL OF THE UNITED STATES SECRETARY OF THE INTERIOR IS REQUIRED FOR ANY PROPOSED EXCHANGE OF HAWAIIAN HOME LANDS FOR STATE LANDS TO CONSOLIDATE TRUST HOLDINGS OR "BETTER EFFECTUATE THE PURPOSES OF THE HOMELANDS ACT."

UNLIKE THE PROVISIONS RESERVING THE FEDERAL GOVERNMENT'S RIGHT TO SUE, WHICH MAY OR MAY NOT INVOLVE A DUTY TO BRING SUIT, ADMINISTRATIVE POWERS GIVEN TO THE SECRETARY OF THE INTERIOR DIRECTLY INVOLVE THE UNITED STATES IN TRUST OPERATIONS.

UNDER THE HOMELANDS ACT, THE SECRETARY IS RESPONSIBLE FOR APPROVING LAND EXCHANGES UNDER THE TRUST. HE/SHE ALSO IS AUTHORIZED TO APPOINT A PERSON FROM THE DEPARTMENT OF THE INTERIOR TO ASSIST THE STATE IN CARRYING OUT ITS DUTIES. SINCE THIS AUTHORIZATION IS CONTAINED IN AN ADMINISTRATIVE PROVISION OF THE HOMELANDS ACT WHICH MAY BE AMENDED BY THE STATE LEGISLATURE WITHOUT UNITED STATES CONSENT, IT IS NOT CLEAR WHAT EFFECT CONGRESS INTENDED BY THIS PROVISION WHEN THE TRUST WAS CONVEYED TO THE STATE.

THE STATE OF HAWAII, THROUGH THE DEPARTMENT OF HAWAIIAN HOME LANDS, AND THE FEDERAL GOVERNMENT SHARE RESPONSIBILITY FOR THE ADMINISTRATION AND ENFORCEMENT OF THE HAWAIIAN HOMES COMMISSION ACT. AS A FIDUCIARY, THE STATE OWES A DUTY TO NATIVE HAWAIIANS AS BENEFICIARIES OF THE TRUST PROPERLY TO ADMINISTER AND ENFORCE THE TRUST. ON THE OTHER HAND, THE UNITED STATES HAS AN HISTORICAL AND STATUTORY OBLIGATION TO ENSURE THAT THE STATE FULFILLS ITS OBLIGATIONS AS TRUSTEE OF THE HAWAIIAN HOME LANDS. THE FEDERAL GOVERNMENT'S RIGHT TO SUE THE STATE FOR BREACHES OF THE TRUST AND THE UNILATERAL AMENDMENT OR REPEAL OF TRUST PROVISIONS GIVE IT ULTIMATE AUTHORITY OVER ENFORCEMENT. THE ADMINISTRATIVE DUTIES IMPOSED ON THE SECRETARY OF THE INTERIOR DIRECTLY INVOLVE THE FEDERAL GOVERNMENT IN TRUST OPERATIONS AND GIVE IT REVIEW POWERS OVER STATE ADMINISTRATION OF THE TRUST.

Senator MATSUNAGA. Thank you. Thank you very much.

Our next witness is Mr. John Carroll. Is Mr. Carroll here? He's not?

We'll go to our next witness, Mr. Nelson Foster, program director, American Friends Service Committee. Mr. Foster, are you here? No?

We will next go then to Ms. Georgianna Padeken, chairperson of the Hawaiian Homes Commission.

STATEMENT OF GEORGIANA K. PADEKEN, CHAIRMAN, HAWAIIAN HOMES COMMISSION

Ms. PADEKEN. Senator Matsunaga, Representative Akaka, and staff of the congressional delegation and the congressional committee, and people who are in attendance. Aloha kakou.

I want to thank Senator Matsunaga and Representative Akaka for the opportunity to testify on the Native Hawaiians Study Commission Report. This report covers a wide range of concerns to the Hawaiian community and others as well. I commend you for conducting hearings throughout the State to solicit various points of view. I know that your deliberations will be informative and productive.

As chairman of the Hawaiian Homes Commission, my testimony will deal with those sections related to the Hawaiian Homes Commission Act, hereinafter, the "act." My previous testimony to the Native Hawaiians Study Commission on January 9, 1982, contained detailed information on origins of the act, the Department of Hawaiian Home Lands and its programs, and several constraints affecting our ability to service native Hawaiians. This testimony is attached for your review.

Since then, a number of processes have taken place, and I'd like to summarize these processes.

The inspector general of the U.S. Department of the Interior conducted an audit report. The State's response followed. And all of this was completed in September 1982. This particular audit report laid the foundation for the creation of the Federal-State task force by agreement by Governor Ariyoshi and then-Secretary of the Interior, Cecil Andrus, in July 1982.

The task force used the audit report as a foundation for its work; the review process allowed for substantial staff and public input. The final report of the task force was completed in August 1983, and submitted to then-Secretary James Watt and Governor Ariyoshi.

Both the Secretary of the Interior and the Governor have provided substantial comments in general support of the task force's recommendations. The U.S. Department of the Interior in fact has appointed a liaison, Ms. Cecil Hoffman, to coordinate efforts with the Department of Hawaiian Home Lands. The Secretary and Governor have both agreed to convene a Federal-State task force in late 1984 to assess the progress that has been made the submittal of the report.

The Commission itself has directed the Department to move the effort forward, following the recommendations of the Federal-State task force. We've adopted both statements. We've established priorities, and are presently working on detailed scopes of work. We are in the process of adjusting our organization, assessing our staffing capabilities, our budgetary requirements, and legislation needed to accomplish our goals.

In this session, the department has introduced substantive legislative proposals that further the recommendations of the Federal-State task force. For example, a resolution to study a leasing homestead development, a resolution to study a leasing program that enables native Hawaiins to use their leasehold interest to secure financing, and resolutions on a public authority device for the Department of Hawaiin Home Lands, and a resolution calling for the return of Hawaiian home lands at Lualualei from the U.S. Government—these directly implement the recommendations of the Federal-State task force.

With clarity of purpose and support at different levels for directions to be pursued, I am confident that progress has been made and will continue in achieving the mission of the Hawaiian Homes Commission. It is our mission to:

Offer land resources and services in forms that are useful to beneficiaries in seeking native Hawaiian advancement, with maximum flexibility for individual decisions and initiative in a manner consistent with trust responsibilities and standards.

Your efforts to enact legislation which will clearly authorize the use of Federal resources to meet native Hawaiian needs will help support our mission.

The discussion section on page 153, volume II, of the Native Hawaiians Study Commission Report, makes reference to amending the Hawaiian Homes Act definiton of native Hawaiian. This is followed by a recommendation which reads:

> That the Congress of the United States adopt a single definition of Native Hawaiian to mean any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778, and that proper guarantees to protect the rights and privileges of those now holding or awaiting Hawaiian Homes awards should accompany this change.

Let me state at the onset that the Hawaiian Homes Commission strongly opposes any revision to the native Hawaiian definition in the Hawaiian Homes Commission Act.

As the specific entity charged with carrying out the provisions of the act, the Hawaiian Homes Commission has a fiduciary responsibility as trustee to protect the rights and interests of native Hawaiian beneficiaries as defined in the act. Recent court decisions—*Ahuna* v. *Department of Home Lands*—have determined that the conduct of the Commission is to be measured by the same strict standards applicable to private trustees. This includes the duty of loyalty to administer the trust solely in the interest of the beneficiary and to hold and protect trust property on their behalf. Failure to meet these trust standards constitutes a breach for which the Commission and its members can be held liable. This recommendation is inconsistent with trust obligations.

The recommendation also fails to take into account the perpetual nature of the trust. The recommendation also raises questions and challenges as to whether the original intent of the U.S. Congress in passing the act has been satisifed and whether the Hawaiian Homes Commission Act should continue.

The recommendation does not consider the current limited financial and land resources of the act in terms of meeting current demands. And the implications could be gleaned as the result of expanding the target group of beneficiaries threefold.

The recommended revision of the native Hawaiian definition in the act is based on the perception that it divides the Hawaiian people. I submit that our culture defines who we are as a people, not a statute or a law. The act simply defines who are eligible to receive benefits from one specific source. The law does not define who is Hawaiian and who is not Hawaiian.

Our perception is that the issue is not the definition of native Hawaiian. The issue is that Hawaiians not eligible under the Hawaiian Homes Commission Act have needs that require similar resources. It is proper then for the Federal Government to examine these needs and respond in an appropriate manner. This response does not, and should not, require any revisions to the Hawaiian Homes Commission Act. This response may require special legislation to provide Federal resources to all Hawaiians.

We are obligated to protect the right and interests as defined in the act. Proposed revisions to the act are formulated solely on the basis of its benefits to native Hawaiians. Proposed revisions to the act are subject to a lengthy review process involving the Commission, the administration, the State legislature, native Hawaiians, and the general public prior to approval and, if necessary, transmittal for U.S. congressional consent. These processes serve useful purposes—to assure that trust standards are followed, beneficiary rights and interests are protected, so that the final approved amendments to the act are sound and supported by those most affected.

As an example, it took 6 years to have the successorship measure passed here in the State of Hawaii. The commission feels that the recommendation proposed in volume II is of even a greater magnitude and significance and that requires the same thorough and lengthy review process, just as the successorship required.

In closing, I'd like to reiterate again that the Hawaiian Homes Commission strongly urges this committee to delete any reference to the Hawaiian Homes Commission Act in terms of revising the current definition of native Hawaiian.

Thank you very much.

[The prepared statement of Ms. Padeken follows:]

Prepared Statement of Georgiana K. Padeken

Chairman Spark Matsunaga and members of the U.S. Senate Committee on Energy and Natural Resources: Mahalo for the opportunity to testify on the Native Hawaiians Study Commission Report. This report covers a wide range of concerns to the Hawaiian community and others. I commend you for conducting hearings throughout the State to solicit various points of view. I know that your deliberations will be informative and productive.

As Chairman of the Hawaiian Homes Commission, my testimony will deal with those sections related to the Hawaiian Homes Commission Act (the "Act"). My previous testimony to the Native Hawaiians Study Commission on January 9, 1982 contained detailed information on the origins of the Act, the Department of Hawaiian Home Lands (the "DHHL") and its programs, and several constraints affecting our ability to service native Hawaiians. This testimony is attached for your review.

Since then, a number of processes have been established and completed with the intent of better effectuating the purposes of the Act and to accelerate the distribution of benefits to our beneficiaries. These processes included:

1. The Inspector General, U. S. Department of the Interior, completed an eight month audit

of the Act and DHHL in September, 1982. Their final report and the State of Hawaii responses are part of Volume I (pg. 371-417) of the Native Hawaiians Study Commission Report.

2. A Federal-State Task Force on the Act was created by Governor George R. Ariyoshi and the (then) Secretary of the Interior, Cecil Andrus, in July, 1982. Using the audit report previously cited as a start, the Task Force undertook a detailed and thorough review of the Act and DHHL programs. The review process allowed for substantial staff and public input. The final report of the Task Force was completed in August, 1983, and submitted to (then) Secretary James Watt and Governor Ariyoshi.

3. Both the Secretary of the Interior and Governor have provided substantive comments in general support of the Task Force's recommendations. The U. S. Department of the Interior has appointed a liaison, Ms. Cecil Hoffman, to coordinate efforts with

DHHL. The Secretary and Governor have agreed to convene a Federal State Task Force in late 1984 to assess progress made in implementing its recommendation.

4. The Hawaiian Homes Commission has directed DHHL to take appropriate actions to move this effort forward. Goal statements have been adopted by the Commission as priority items and detailed scopes of work are being completed. DHHL is in the process of adjusting its organization, assessing its staff capabilities, budgetary requirements, and legislation needed to accomplish its goals.

DHHL has introduced substantive legislative proposals that further Task Force recommendations. For example, a bill to allow multifamily homestead development, a resolution to study a leasing program that enables native Hawaiians to use their leasehold interest to secure financing, and resolutions on a public authority device for DHHL and return of DHHL lands at Lualualei, Oahu from the United States directly implement Task Force recommendations.

With clarity of purpose and support at different levels for directions to be pursued, I am confident that significant progress has been made, and will continue, in achieving the mission of the Hawaiian Homes Commission. It is our mission to:

> OFFER LAND RESOURCES AND SERVICES IN FORMS THAT ARE USEFUL TO BENEFICIARIES IN SEEKING NATIVE HAWAIIAN ADVANCEMENT, WITH MAXIMUM FLEXIBILITY FOR INDIVIDUAL DECISIONS AND INITIATIVE IN A MANNER CONSISTENT WITH TRUST RESPONSIBILITIES AND STANDARDS.

Your Committee can be assured that consistent with Native Hawaiians Study Commission Report recommendations (Volume I, page 29), the Federal-State Task Force Report on the Hawaiian Homes Commission Act is being implemented in a purposeful and orderly manner. Your efforts to enact legislation which will clearly authorize the use of federal resources to meet native Hawaiian needs will help support our mission.

The discussion section on page 153, Volume II, of the Native Hawaiian Study Commission Report makes reference to "amend(ing) the Hawaiian Homes Act definition" of native Hawaiian. This is followed by a recommendation which reads:

> That the Congress of the United States adopt a single definition of Native Hawaiian to mean any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778. Proper guarantees to protect the rights and privileges of those now holding or awaiting a Hawaiian Homes award should accompany this change. (Volume II, pg 17 and 153)

The context of this recommendation leads us to conclude that it calls for a major revision to the eligibility requirements of the Hawaiian Homes Commission Act. The Act defines "native Hawaiian" as "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778".

Let me state at the onset that the Hawaiian Homes Commission strongly opposes any revision to the native Hawaiian definition in the Hawaiian Homes Commission Act.

As the specific entity charged with carrying out the provisions of the Act, the Hawaiian Homes Commission has a fiduciary responsibility as trustee to protect the rights and interests of native Hawaiian beneficiaries as defined in the Act. Recent court decisions (Ahuna v. Department of Hawaiian Home Lands, 64 Haw. 327 1982) have determined that the conduct of the Commission is to be measured by the same strict standards applicable to private trustees. This includes the duty of loyalty to administer the trust solely in the interest of the beneficiary and to hold and protect trust property on their behalf. Failure to meet these trust standards constitutes a breach for which the Commission and its members can be held liable. This recommendation is inconsistent with trust obiligations.

The recommendation fails to take into account the perpetual nature of the trust. The Act is intended to provide benefits to present and future generations of native Hawaiians. As there is no definitive census of the native Hawaiian population, we cannot conclude that those with lease awards and those on the present waiting list constitute all native Hawaiians entitled to trust benefits.

The recommendation raises questions and challenges as to whether the original intent of the U. S. Congress in passing the Act has been satisfied and whether the Hawaiian Homes Commission Act should continue.

The recommendation does not consider the current limited financial and land resources of the Act in terms of meeting current demands. The implications of, in effect, increasing the size of the beneficiary group three-fold is ignored. It is estimated that more than $700 million would be needed for site improvements and financing to satisfy current waiting lists in excess of 8,000 applicants for homestead awards. There are limited lands available, especially on Oahu, that are developable and located close to infrastructure, public facilities, and employment.

There are many native Hawaiians whose desires for advancement are not limited to homestead residential or agricultural leases. DHHL has initiated programs and services designed to address these areas of concern as well. In a modern context, native Hawaiian advancement can be defined in a variety of ways. Trust assets, whether in the form of land or income generated from the land and its resources can be used to support a number of native Hawaiian benefits and services. The recommendation is based on the notion that the only trust benefit is use of the land for homesteading.

The recommended revision of the native Hawaiian definition in the Hawaiian Homes Commission Act is based on the perception that it divides the Hawaiian people. I submit that our culture defines who we are as a people, not a statute or law. The Act simply defines persons who are eligible to receive benefits from one specific source. The law does not define who is Hawaiian and who is not Hawaiian.

Our perception is that the issue is not the definition of native Hawaiian. The issue is that Hawaiians not eligible under the Hawaiian Homes Commission Act have needs that require similar resources. It is proper for the federal government to examine these needs and respond in an appropriate manner. This response does not, and should not, require any revisions to the Hawaiian Homes Commission Act. This response may require special legislation to provide federal resources to all Hawaiians.

The Hawaiian Homes Commission is obligated to protect the rights and interests of native Hawaiians as defined in the Act. Proposed revisions to the Act are formulated solely on the basis of its benefits to native Hawaiians. Proposed revisions to the Act are subject to a lengthy review process involving the Hawaiian Homes Commission, State Administration, State Legislature, native Hawaiians and general public prior to approval and (if necessary) transmittal for U. S. Congressional consent. These processes serve useful purposes - - - to assure that trust standards are followed, beneficiary rights and interests are protected, the final approved amendments to the Act are sound and supported by those most affected.

As an example, passage of the "Successorship Bill" (Act 272, Session Laws of Hawaii 1982) by the State legislature required six years of review and revision. The final version was substantially different from the original proposal. The bill was approved because of beneficiary concern for their survivors who were not eligible to succeed to the lease. It was felt that the homestead lease should provide continuity for families to continue to build for future generations.

As it applies to the Hawaiian Homes Commission Act, this recommendation to revise the native Hawaiian definition has significant implications. It requires in-depth analysis, input by native Hawaiians and the Hawaiian Homes Commission, and scrutiny at the local level. This recommendation has not undergone the extensive review and discussion at various levels that it deserves. Its benefits to native Hawaiians, if any, are not known. Its reference to "protect the rights and privileges of those now holding or awaiting a Hawaiian Homes award" is very vague and fails to consider future generations of native Hawaiians. The recommendation is based on the faulty assumption that the only avenue to promote native Hawaiian advancement is homesteading. The recommendation overlooks the fact that amendments to the Hawaiian Homes Commission Act require approval by the State Legislature and when applicable, the consent of Congress.

The Hawaiian Homes Commission strongly urges this Committee to delete any reference to the Hawaiian Homes Commission Act in terms of revising its current definition of native Hawaiian.

Thank you very much.

SUBMITTED BY:

Georgiana K. Padek

Ms. Georgiana K. Padeken, Chairman
Hawaiian Homes Commission

Attachment (1)

TESTIMONY DELIVERED TO

NATIVE HAWAIIANS STUDY COMMISSION

JANUARY 9, 1982

DELIVERED BY:

GEORGIANA K. PADEKEN, CHAIRMAN
HAWAIIAN HOME COMMISSION

I. HAWAIIAN HOMES COMMISSION ACT, 1920-- HISTORICAL OVERVIEW

The Hawaiian Homes Commission Act, 1920, enacted by the United State Congress in 1921 and later adopted as a law of the State of Hawaii Constitution, represents an attempt to rehabilitate the native Hawaiian people through a government sponsored homesteading program.

A. Basis for the Act

During the early years of the 1900's, concern for the plight of the Hawaiian people was widely expressed. Many Hawaiians were jobless, homeless, landless, and driven into the cheapest places due to the impact of foreign influences and changes in the island's economic and social lifestyle.

A number of Hawaiian associations sprang up hoping to help the less fortunate members of their race and to instill in them a new racial consciousness and pride. The Hawaiian Protective Association and the Hawaiian Civic Club functioned as centers of discussion on the issue of "rehabilitation" of the Hawaiian race.

With the opening of the 10th Territorial Legislature in 1919, Senator John Wise became the first Hawaiian to propose any formal legislative action on the rehabilitation question. Senate Concurrent Resolution 2, introduced by Wise, requested that "suitable portions of the public lands of the Territory of Hawaii" be set aside for use by Hawaiian lessees. This resolution, along with several resolutions requesting certain changes in the public land laws of the Territory, was passed by the legislature and forwarded to Washington, D. C. for congressional consideration. A Territorial Legislative Commission was sent to Washington to press for favorable congressional action on the resolutions. Prince Kuhio, Hawaii's Delegate to Congress, worked closely with the Commission in Washington.

Senator Wise was one of the four legislators included in the delegation sent to Washington. The other commission members felt that the proposed amendments to the public land laws should be given priority in the commission's lobbying efforts, while Wise was most concerned with the rehabilitation resolution. His testimony before the House committee on Territories at the second session of the 66th congress in early 1920 successfully focused the committee's attention on Hawaiian rehabilitation rather than on the issue of public land disposition.

The proposals for Hawaiian rehabilitation and for public land law amendment were contradictory as originally conceived. The major resolution relating to land law amendments proposed that the highly developed cane lands of the Territory, on which leases were expiring between 1917 and 1921, be withdrawn from the general homestead laws of the Territory and be leased to the highest bidder at public auction. This would have meant the retention of the best agricultural lands in the hands of the sugar interests. The original Hawaiian rehabilitation proposal, however, would have made these lands available for homesteading.

A political compromise was worked out between the sponsors of the rehabilitation measure and the sugar interests supporting the public land law amendments. The two proposals were made interdependent by earmarking 30 percent of the revenue derived from the leasing of the cane lands as the major source of income for the rehabilitation program. All acreage cultivated for sugar or held under special leases were excluded from the lands to be made available for homesteading by Hawaiians.

The Hawaiian homesteading program was substantially weakened by the withdrawal of some of the best agricultural lands of the Territory from the project. The quality of the lands remaining is one factor which has severely handicapped carrying out of the program's stated purpose. Much of the land is too arid, steep or rocky to be used for genuine homesteading.

Congress saw two major factors which prompted passage of the Hawaiian Homes Commission Act. First, the native Hawaiians were a dying race. Population charts made part of the congressional report showed that the number of full-blooded Hawaiians in the Territory had decreased since the estimate of 1826 from 142,650 to 22,600 in 1919. Second, Congress saw that all previous systems of land distribution were totally ineffective when judged practically by the benefits accruing to the Native Hawaiians from the operation of such systems.

The Committee on Territories found that:

> "Since the institution of private ownership of lands in Hawaii, the native Hawaiian, outside of the King and chiefs, were granted and have held but a very small portion of the lands of the Islands. Under the Homestead laws somewhat more than a majority of the lands were homesteaded to Hawaiians, but a great many of these lands have been lost through improvidence and inability to finance farming operations. Most frequently, however, the native Hawaiian, with no thought of the future, has obtained the land for a nominal sum, only to turn about and sell it to wealthy interests for a sum more nearly approaching its real value...In the end, the speculators are the real beneficiaries of the homestead laws."

B. Passage of the Act

In view of the foregoing conditions, the Committee on Territories, in recommending passage for the measure, stated:

> (Y)our committee believes it necessary to provide another and different method of homesteading in the Territory of Hawaii, as a basis for the solution of the problem confronting it. Your committee is, however, of the opinion that (1) the Hawaiian must be placed upon the land to insure his rehabilitation; (2) alienation of such land must, not only in the immediate future but also for many years to come be made impossible; (3) accessible water in adequate amounts must be provided for all tracts; and (4) the Hawaiian must be financially aided until his farming operations are well under way."

Congress enacted and the President signed into law the Hawaiian Homes Commission Act, 1920, on July 9, 1921, (42 Stat. 108), hereinafter called the "Act". The Act set aside approximately 203,500 acres of public lands: 9,000 acres on Oahu; 31,000 acres on Maui; 33,700 acres on Molokai; 107,300 acres on Hawaii; and 22,500 acres on Kauai.

These lands were to be known as "Hawaiian home lands" and placed under control of a commission known as the Hawaiian Homes Commission. The Commission was to be composed of five members, the governor, who was to be the Chairman, and four members appointed by the governor, three of whom were to be native Hawaiians.

C. Probationary Program Status

Included in the original statute was a proviso which limited the usage of Hawaiian homestead lands for a five-year probationary period.

> "For a period of five years after the first meeting of Hawaiian Homes Commission only those lands situated on the island of Molokai...Waimanu, in the district of Hamakua; Keaukaha, in the district of South Hilo, island of Hawaii, shall be available for use and disposition by said commission under the provisions of this title and none of the remaining available lands...shall, after the expiration of the said five-year period, be leased, used, or otherwise disposed of by the commission under the provisions of this title, except by further authorization of Congress and with the written approval of the secretary of the Interior of the United States."

Thus, for the initial five-year probationary period and until extended by Congress, only the lands on Molokai; and Waimanu, Keaukaha and Panaewa, on the island of Hawaii, were available to the Commission for homesteading purposes under the Act.

Under the original Act, the Commission was authorized to lease native Hawaiians, Hawaiian home lands within the following acreage limits:

1)	Agricultural lands	20-30	acres
2)	First-class pastoral	100-500	acres
3)	Second-class pastoral	250-1000	acres

Each homestead lease was subject to the following conditions:

(1) The lessee must be a native Hawaiian, defined as "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778;"

2) The lease is for a term of ninety-nine years at $1 per year;

3) The lessee must occupy and use or cultivate the tract within one year after the lease is made;

4) The lessee must thereafter, for at least such part of each year as the Commission prescribes, occupy and use or cultivate the tract on his own behalf;

5) The lessee cannot in any manner transfer to, or mortgage, pledge, or otherwise hold for the benefit of, any other person, his interest in the tract except a native Hawaiian, and then only upon the approval of the Commission;

6) The lessee is exempt from all taxes for the first five years from date of lease, and thereafter must pay all taxes assessed upon the tract, and improvements thereon.

Any Hawaiian home lands not leased to native Hawaiians under section 207 of the Act were to be kept in use under temporary leases by the Commission of Public Lands.

In order to provide for necessary loans to native Hawaiians so that their farming operations for the first few years may be stabilized and to provide for the expenditures of the Commission for the administration and acquisition of water rights, a Hawaiian Home Loan Fund was established with a ceiling of one million dollars. The primary source for this revolving fund was 30 percent of the rentals obtained from the leasing of the cultivated sugar-cane lands, as noted before, from water licenses, and the revenues from the leasing of the Hawaiian home lands returned to the Commissioner of Public lands.

Under the Act, the Commission was authorized to offer financial assistance to individual homesteaders through low interest loans for agricultural development and home construction as well as provide agricultural and other experts to aid the homesteaders in developing their farms or ranches.

Thus the Act, as originally conceived and enacted, was intended for rural homesteading, i.e., for native Hawaiians to leave the city slums and return to the land, there to become subsistent or commercial farmers and ranchers. However, by February 3, 1923, the Act was amended by Congress to permit residence lots of one-half acre or more with a loan limit of $1,000 for the construction of their homes. Ever since the 1920's, the demand of native Hawaiians for residential houselots has far exceeded the demand for agricultural or pastoral lots.

In July, 1922, the first homesteader moved to Molokai's Kalanaianaole Settlement in lower Kalamaula. Following the 1923 amendment to include residential lots, residential homestead awards were made in Keaukaha on the island of Hawaii a year later.

D. Permanent Program

In 1927, the Territorial Legislature, after having made a thorough investigation of the homestead program on the islands of Molokai and Hawaii, found the program to be a success and requested the Secretary of Interior and the Congress of the United States to extend the activities of the Hawaiian Homes Commission under the Act to all of the other islands. By Act of March 7, 1928 (45 Stat. 246), the Act was amended to remove the five year probationary provision and to increase the Hawaiian Home Loan Fund ceiling to two million dollars.

At the urging of the Territorial Legislature, Congress also included a provision that "the commission shall not lease, use, nor dispose of more than twenty thousand (20,000) acres of the area of Hawaiian home lands, for settlement by native Hawaiians, in any calendar five-year period." [Act Sec. 204(3)]. Congressional reports reflect that this "new subsection was for the purpose of preventing too rapid development of the project in the absence of sufficient funds. To date about 4,000 acres have been homesteaded in the six-year period. The new subsection provides a limit of not more than 20,000 acres in any five-year period, or 4,000 acres per year if prorated, as it probably will be. This is about as fast as experience dictates; development can be undertaken with the funds at hand..."

The homesteading program was expanded to the remaining islands of Oahu (1930) Maui (1964) and Kauai (1955).

E. The Land Base

In the administration of the Hawaiian Homes Commission Act, the Hawaiian Homes Commission and its successor, the Department of Hawaiian Home Lands (DHHL), have long been aware of alleged mismanagement of lands resulting in a "loss" of Hawaiian home lands.

Some have attributed the loss of these lands through land exchanges. However, as a result of seven land exchanges made prior to statehood, the DHHL has realized a net gain of 1,312 acres of additional Hawaiian home lands.

Some have attributed the loss of lands to Congressional withdrawals. It is true that Congress withdrew 272 acres of Hawaiian home lands and restored them to their former status as public lands under the control of the Territorial Commissioner of Public Lands. However, Congress also placed 564 additional acres of land under the Hawaiian homes program. Congressional additions and withdrawals resulted in a net gain of 292 acres.

Clearly, neither the exchanges made by the Commission nor the withdrawals made by Congress can be said to be the cause of the missing lands.

A major cause for the alleged missing lands is the expressed exclusions contained in the HHCA. In Section 203, Congress provided in pertinent part as follows:

> "All public lands of the description and acreage. as follows, excluding (a) all lands within any forest reservation, (b) all cultivated sugar-cane lands, and (c) all public lands held under a certificate of

> occupation, homestead lease, right of purchase lease, or special homestead agreement, are hereby designated, and hereafter referred to, as 'available lands':"

Additional exclusions relating to the lands of Waimanalo are provided in subsection (4) of Section 203 HHCA, which reads:

> "(4) on the island of Oahu:....Waimanalo (four thousand acres, more or less), in the District of Koolaupoko, excepting therefrom the military reservation and the beach lands...."

As a result of the exclusion of lands in forest reserve, almost 10,000 acres were precluded from becoming Hawaiian home lands.

Lack of sufficient knowledge of the lands designated as available lands was another major factor. For example, the HHCA designates 5,000 acres of the lands of Kalaupapa, Molokai, as available lands. However, the entire ahupuaa* of Kalaupapa consists of only 1,247 acres, all of which are included in the Hawaiian home lands inventory. Thus, there never were 5,000 acres in Kalaupapa, although there was a "paper" loss of 3,753 acres. Also, the HHCA designated 25,000 acres in Kahikinui on the Island of Maui. However, the entire ahupuaa* of Kahikinui only contains a gross area of 22,890 acres. Excluding private lands, grants, and possible Land Commission Awards totalling approximately 254 acres, the net area which could possibly attain the status of Hawiian home lands was 22,531.9 acres, realizing another "paper" loss of 2,468.1 acres.

There are other such examples but not of such large acreages, such as Nienie, Kamoku-Kapulena and Pauahi.

The exclusion of public lands under sugar-cane cultivation accounts for a loss of approximately 4,000 acres in the area of Waimanalo and Lualualei on the island of Oahu, and Anahola-Kamalomalo on the island of Kauai.

Regarding the Lualualei lands, approximately 1,343 acres are presently under use by the federal government through illegal executive orders. These lands were set aside by Governor's Executive Order 382 dated January 21, 1930 and Executive Order 599 dated December 22, 1933 and are presently utilized by the Navy as part of a radio transmitting station as well as an ammunition depot. The State has written to the Secretary of Interior seeking its assistance in obtaining the return of these lands or compensation therefore as well as compensation for its past use and occupancy.

F. Statehood

With the advent of Statehood, a condition of admission and a compact between the United States and the State of Hawaii, the Act was adopted as a provision of the Hawaii Constitution. The Hawaiian home lands, title to which was granted to the State of Hawaii upon its admission, together with the income and proceeds therefrom, was required to be held in trust and to be used in the manner and for the purpose set forth in the Act. Congress provided that the use for any other object would constitute a breach of trust for which suit may be brought by the United States. Congress continues to have supervisory powers over the Act and under the compact, certain amendments to the Act may be made only with the consent of Congress.

That Congress has the power to impose and enforce trust agreements which are contained in the enabling acts of new states is beyond question. As a result of the Admissions Act the State carries the major responsibility of carrying out the trust established for native Hawaiians first initiated by the United State Congress over half a century ago.

II. AFTER STATEHOOD

Following statehood the Hawaiian Homes Commission, as it was then constituted, was abolished.

A. The Commission, Department

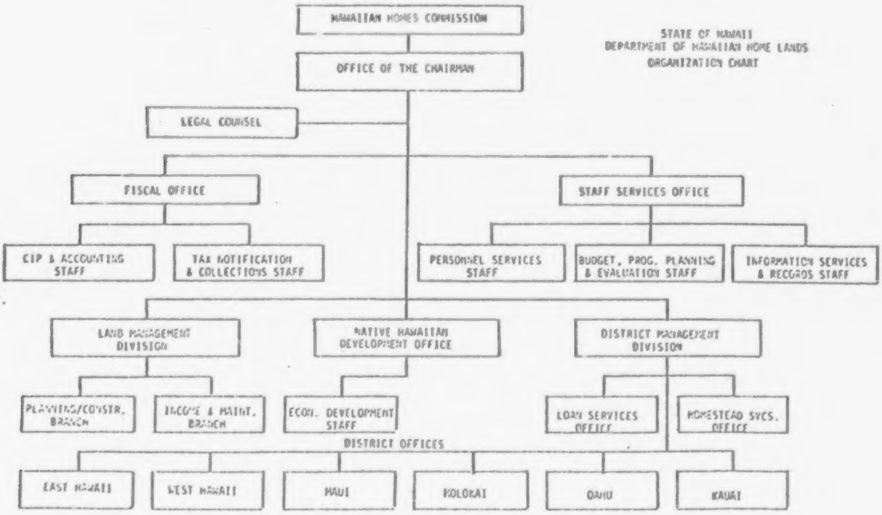
The Department of Hawaiian Home Lands, an executive department of the State, was established and was given the responsibility of administering the

Act. The Department was to be headed by an executive board known as the Hawaiian Homes Commission consisting of seven members.

Today, the Hawaiian Homes Commission (HHC) is composed of eight members. The Chairman, appointed by the Governor and confirmed by the Senate, serves in a full-time capacity and performs such duties and exercises such powers and authority as may be delegated by the board.

Commissioners are appointed by the Governor for our-year terms; three from Oahu; one each from Hawaii, Maui, Molokai, and Kauai.

The Department's formal organization structure includes five units--Fiscal, Staff Services Offices, Land Management, and district Management Divisions, and the newly established Native Hawaiian Development Office (NHDO). The organization chart is included for information purposes.



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
ORGANIZATION CHART

HAWAIIAN HOMES COMMISSION
OFFICE OF THE CHAIRMAN
LEGAL COUNSEL
FISCAL OFFICE
STAFF SERVICES OFFICE
CIP & ACCOUNTING STAFF
TAX NOTIFICATION & COLLECTIONS STAFF
PERSONNEL SERVICES STAFF
BUDGET, PROG. PLANNING & EVALUATION STAFF
INFORMATION SERVICES & RECORDS STAFF
LAND MANAGEMENT DIVISION
NATIVE HAWAIIAN DEVELOPMENT OFFICE
DISTRICT MANAGEMENT DIVISION
PLANNING/CONSTR. BRANCH
INCOME & MAINT. BRANCH
ECON. DEVELOPMENT STAFF
LOAN SERVICES OFFICE
HOMESTEAD SVCS. OFFICE
DISTRICT OFFICES
EAST HAWAII
WEST HAWAII
MAUI
MOLOKAI
OAHU
KAUAI

B. Funding Sources

Section 213 of the HHC Act, 1920, as amended, established seven revolving funds and eight special funds in the State treasury (see annual report, pages 18 through 30).

Over the past five years, the Department's available funds averaged $10 to $12 million annually. These funds are derived from six major sources:

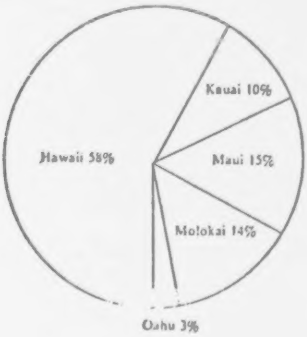
1. Interest earned on loans and investments (20%)
2. Repayment on loan principal (9%)
3. Rental payments on general leases of Hawaiian Home lands to the public (11%)
4. 30% of State sugar and water lease license (8%)
5. State general obligation bonds (50%)
6. Other miscellaneous sources (2%)

These funds are used for operating costs, loan capitalization, and construction projects.

III. LAND

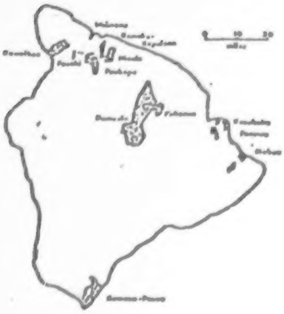
The Department manages approximately 190,000 acres of lands throughout the State. Following is a graph of statewide land distribution and maps indicating Hawaiian Home Lands on Each island.

DISTRIBUTION OF HAWAIIAN HOME LANDS BY ISLAND



HAWAII

[illegible] ACRES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OAHU

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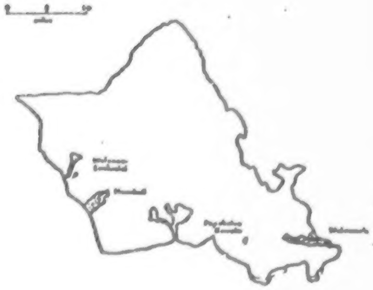

KAUAI

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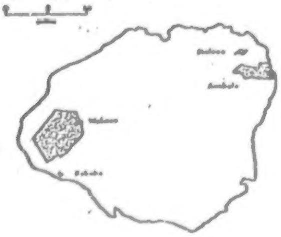
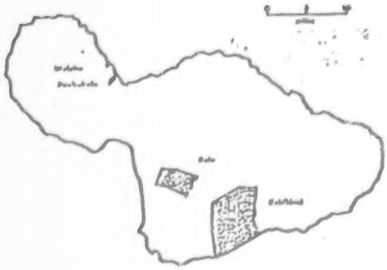


MAUI

[illegible] ACRES



MOLOKAI

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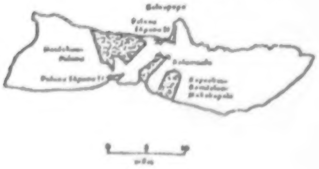


Approximately 40,000 acres or 21% of the lands are in homestead use. Land uses also include general leases, licenses and others as depicted below.

LAND USE SUMMARIES

as of June 30, 1981

USE	Homestead Use HOMES	FARMS	RANCHES	COMMUNITY PASTURES	GENERAL LEASE	LICENSES	OTHERS*	TOTAL ACREAGE
Acreage	1,330	7,619	17,113	13,706	75,739	1,124	73,093	189,724

* This category represents acreage under the Governor's Executive Orders, Unencumbered Lands, Conservation Lands, Revocable Permits, Right-of-Entries, and DLNR administered leases on DHHL land.

NOTE: Presently, it is the opinion of the Attorney General that Executive Orders on Hawaiian Home Lands are invalid, necessitating further review.

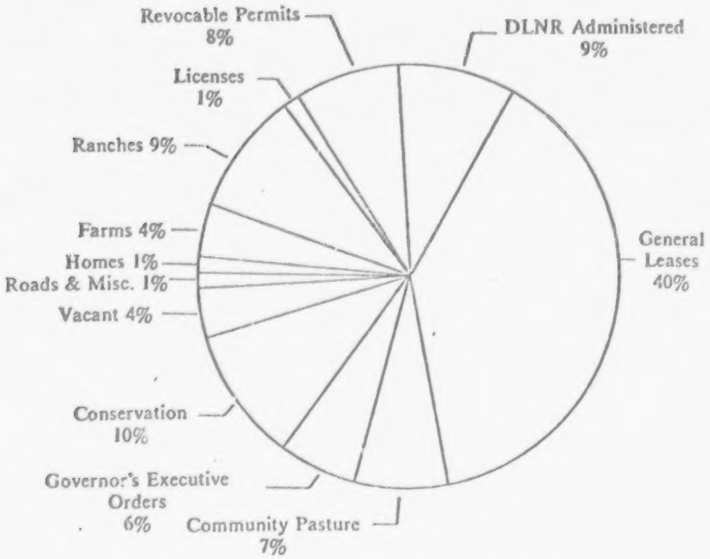
LAND USE SUMMARY BY ISLAND

ACREAGE USE	HAWAII	KAUAI	MAUI	MOLOKAI	OAHU	TOTAL ACREAGE
Homestead	17,504	546	17	7,576	419	26,062
General Lease	50,568	316	21,680	883	2,292	75,739
Community Pasture	550	—	—	13,156	—	13,706
Licenses	16	11	7	1,001	89	1,124
Others	41,937	17,816	7,301	3,594	2,445	73,093
Totals	110,575	18,689	29,005	26,210	5,245	189,724

Although the Department uses only 21% of its land holdings for homestead purposes and 40% for general leasing, the Department's long range goal is to substantially reduce the acreage of lands presently under general lease and make these lands available for direct use by native Hawaiians.

A more comprehensive picture of the Department's land use is presented here -

HAWAIIAN HOME LANDS USE



NOTE: 98.7% of Hawaiian Home Lands used for General Leases are composed of farming, pasture, and dairy lands. Land use in this interim manner will continue until the Department is able to produce sufficient income to develop these lands for specific homestead purposes.

IV. PROGRAMS

The Department's major purpose is to provide native Hawaiians with access to the land through homestead leases. Financial assistance to develop and maintain homesteads is also available through the Department's loan programs.

Homestead leases are awarded for residential, agricultural, and ranch uses.

A. Residential

The emphasis of the Department's efforts has long been in the housing area. Housing is critical for native Hawaiians. The residential lot award is the most sought after Department program. Approximately 2,700 homes currently exist on about one percent of the Department's lands. Through its residential program, the Department services nearly 3,000 native Hawaiian families or an approximate population of 18,000.

During the last six years, about 1,305 new homes were constructed, an average of 200 per year. This compares with average annual housing production of less than 25 during the 1950-1975 period.

The current level of housing production requires a constant and large amount of funds. Since 1975, the state has allotted over $40 million in general obligation bond monies for offsite improvements and loan capitalization. This infusion of state funds will not continue because of the constitutional operating limit requirement.

There are currently over 6,300 native Hawaiians waiting for residential awards. With interest rates and housing costs in the private sector, the demand for residential homesteads will increase dramatically. The problem is a lack of funds.

It costs $75,000 to place a native Hawaiian family on a residential homestead today. Site improvements -- roads, sewers, water, electrical lines, and grading -- cost about $35,000 per lot. This cost is borned by the State of Hawaii and is not passed on to the homesteader. Constructing the house costs another $40,000. Again, the State of Hawaii bears the cost of financing low interest direct or guaranteed loans.

It will take $477 million to satisfy the residential waiting list of 6,360. Under the State's spending ceiling funds are restricted and reduced. In a time of inflation and spiraling construction costs, DHHL's ability to respond to native Hawaiian needs is severely limited.

B. Farms and Ranches

The Department currently has almost 400 farm lessees on three agricultural parks -- Hoolehua, Molokai, and Kamuela and Panaewa on the Big Island. The present administration is working diligently to meet the needs of our native Hawaiian farmers.

Development costs are very high. The Department provides land, water and road improvements, and farm loans up to $35,000. Other efforts are being made to promote successful native Hawaiian farm operations.

Administrative rules have been changed to allow residences on farm and pastoral lots. To further assist the farmers with farm operations, the department is providing techinical assistance through a cooperative effort with the University of Hawaii.

In addition, more comprehensive farm plans are required in an effort to better service existing and new farm lessees including those who wish to expand their holdings.

There are 600 native Hawaiians on the farming waiting list. Again, the biggest obstacle is a lack of funds for additional training, expansion of DHHL agricultural parks, and farm loans.

Approximately 60 native Hawaiians are engaged in homestead ranching operations. Ranch acreages vary from about 60 to 400 acres. Services provided are comparable to those of the farm program. There are 321 native Hawaiians waiting for ranch awards.

A summary of homestead leases is included on the following page for information. (See page 9, Annual Report).

SUMMARY OF HOMESTEAD LEASES BY ISLAND

AS OF JUNE 30, 1981

	RESIDENTIAL	FARM		RANCH		
ISLAND	RES. ONLY	FARM W/ RES.	FARM ONLY	RANCH W/ RES.	RANCH ONLY	AWARDS
HAWAII						
Kawaihae	7					7
Keaukaha	323					323
Panaewa/Waiakea	142	5	56			203
Waimea	107		27	15	44	193
SUBTOTAL	579	5	83	15	44	726
KAUAI						
Anahola	137		1			138
Kekaha (Puu Opae)	50				2	52
SUBTOTAL	187		1		2	190
MAUI						
Paukukalo	89					89
SUBTOTAL	89					89
MOLOKAI						
Hoolehua	40	176	26		5	247
Kalamaula	5	42	12		1	60
Kapaakea	44					44
O'ne Alii	27					27
Kamiloloa				2		2
SUBTOTAL	116	218	38	2	6	380
OAHU						
Lualualei		1	1			2
Nanakuli	660					660
Papakolea	320					320
Waianae	153					153
Waimanalo	514					514
SUBTOTAL	1,647	1	1			1,649
STATEWIDE TOTAL	2,618	224	123	17	52	3,034

Project Managers:

Hawaii	Kauai	Maui	Molokai	Oahu
Ed Kanahele, East Hawaii 935-5575/9693 William Vincent, West Hawaii 885-7091	Juliet Aiu 245-4329	Dewey Eberly 244-4248	Alex Bishaw 567-6104/6296	Mel Kwan 548-3223

C. Loans

The Department is authorized to grant loans to qualified native Hawaiians primarily for developing their homesteads. Because homesteaders cannot mortgage the land they lease, they lack the usual collateral required by traditional lending institutions to secure loans. Homesteaders are therefore caught in a closed system; dependent on the Department of Hawaiian Home Lands for financing and unable to tap outside resources

To help fill the gap, the Department offers four basic types of loans to homestead lessees at low interest rates. Loans are made to construct new homes, replace old and dilapidated homes, home repairs, and for farming and ranching purposes. Since 1975, the state has alloted $14 million for loans.

The Department has approximately 1,700 outstanding direct loans totaling about $28 million.

The Department also provides guarantees to assist homesteaders in securing loans from other lending sources such as the Farmers Home Administration and the State's Hawaii Housing Authority. The Department, to date, has guaranteed approximately 650 loans totaling over $12 million.

D. Economic Development

The Native Hawaiian Rehabilitation Fund was authorized by the 1978 Constitutional Convention. The Native Hawaiian Development Office will administer Native Hawaiian Rehabilitation Funds derived from 30% of the State's receipts "from the leasing of cultivated sugar cane lands under any provision of law or from water licenses..." These funds amount to roughly $400,000 annually and come from State lands.

The funds provide monies for a broad range of activities "to include but not limited to educational, economic, political, social, and cultural processes by which the general welfare and condition of native Hawaiians are thereby improved." Unlike other DHHL programs, these monies may be used to benefit all native Hawaiians both homesteaders and non-homesteaders alike.

Planning and developing for this program were in direct response to a series of state-wide community meetings. Economic development was identified as a major need area. Services will be provided to assist native Hawaiians in initiation of or expansion of small business ventures in the areas of business and technical assistance, education and training, and small business loans.

E. Negotiated Native Hawaiian General Leases

The 1978 amendments to the State Constitution also authorized the Department to enter into negotiated general leases with native Hawaiians based on minimum appraised rent before making such lands available to the general public on an auction basis. This provides direct advantages for native Hawaiian business growth and development. Native Hawaiians can secure general leases at the upset rental without competing with the general public. DHHL lands have commercial, industrial and agricultural potentials. Its natural resources include minerals, cinders, rocks, timber, and exotic plants. About 5 acres of improved industrial lots are vacant at this time. Funds will be needed to improve other industrially-zoned lands so that additional lots can be opened.

F. Revenue-Producing Lands

The Department generates income through its general leases for commercial and industrial purposes. Income from this program is the primary source of funding for the Department's administrative and operating expenses.

This program has frequently drawn criticism. Available general leases have been opened to the general public and have gone to the highest qualified bidder. Traditionally, native Hawaiians have not secured general leases. Because non-native Hawaiians have usually leased these lands, it has been argued that the general lease program is a misuse of lands set aside for native Hawaiians. As mentioned previously, Hawaiians now have first option to these lands through negotiated general leases.

The Department is working to reduce the amount of acres used for general leases by focusing on high revenue commercial and industrial uses. For example, a 39-acre shopping center lease provides a base rent of $173,250 per year plus a percentage of gross annual occupancy rental. This one disposition of only 39 acres generates $173,250 as compared to 87,901 acres generating $303,330 per year in pastoral general leases.

V. CONCERNS, CONSTRAINTS

My testimony this afternoon shows the progress DHHL has made over the past 60 years. The number of native Hawaiian lessees has increased dramatically since 1975. The Department is expanding services to include agricultural training, economic development, and negotiated general leases to all Native Hawaiian beneficiaries.

The Hawaiian Homes Commission is very concerned, however, that this positive trend will not continue. There are several major constraints that point to a reduction in services in the future. This comes at a time when the waiting list has surpassed 7,000 --- more than double the number ten years ago.

1. While DHHL has lands to serve the beneficiary group, there are insufficient funds to develop the lands and provide financing. Inflation and the State operating ceiling are reducing DHHL's ability to make more lands available to native Hawaiians and further the intent of the Act.

2. DHHL is totally dependent on general leases to cover administrative costs. General lease revenues have not kept pace with staff requirements to service program expansion. There is a need to expand our revenue-producing capabilities without using large tracts of land.

3. The DHHL land base on Oahu will soon be completely developed and more than 4,000 native Hawaiians have applied for awards here. There is a need for more land in suitable locations on Oahu. The return of Lualualei lands or compensation will help alleviate this problem.

4. DHHL's experience over the past 60 years has demonstrated to us that land alone is not a panacea to address native Hawaiian problems and needs. Balanced programs are needed that deal with components of a whole system. For example, the DHHL farm program requires land, water, financing, training, techinical assistance, and committed native Hawaiians.

5. We need to explore methods so that the equity in homestead lands can leverage outside financing. Lessees are very dependent on DHHL for most financing needs. DHHL's ability to respond is limited.

6. The DHHL cannot extend the homestead to survivors of lessees who are not native Hawaiian; the non-qualifying spouse and children are evicted from the land. The homestead land should be treated as ancestral land, that is, handed down from generation to generation for 99 years, to the heirs of the original native Hawaiian lessees. This would be culturally in keeping with Hawaiian values related to ancestors, family, and land.

VI. SUMMARY

I hope that in this brief presentation you have gained some awareness of the Department of Hawaiian Home Lands, its programs and its many complexities. It is extremely difficult to grasp the challenges faced in carrying out the mandate of the Act through this short presentation or with only a cursory review of the Act or the annual report.

I would like to have added many more details to provide a more comprehensive understanding. Rest assured that in the ensuing months, I will be happy to respond to questions which will further assist you in your efforts to gain a thorough understanding of Hawaiian needs.

I offer my sincerest wishes for success to each of you in the difficult task before you.

Aloha.

Respectfully submitted,

GEORGIANA K. PADEKEN
CHAIRMAN
HAWAIIAN HOMES COMMISSION

Senator MATSUNAGA. We are not asking questions of any witnesses, although I'm very much tempted to in some of the instances. However, we may submit questions to some of you witnesses who had or who will testify, in writing, so that your responses may be made part of the record for reading by all the members of the committee.

Our next witness is Mr. David Kahai Trask. Is Kahai here? No? Mr. Tom Maunupau. Tom, are you here?

STATEMENT OF TOM MAUNUPAU

Mr. MAUNUPAU. Aloha, Congressman Matsunaga and Congressman Akaka, and the staff members.

Excuse me, I will read this out, and later on have my testimony sent to your office.

Many of the statements we hear today have been critical of the report of the majority commission and in my mind it raises many questions. For one, I understand that diplomat Stevens was assigned to Uruguay prior to his assignment to Hawaii, here. And when there was a revolution there, he called in troops there, and then was, I think, called back; and later was assigned to Hawaii.

If they should question the mentality of that time—also, if they ask me, that Stevens and company acted independently and without Government approval, the question in my mind is: How then does the United States justify the taking of lands and sovereignty of Hawaii?

From these illegal actions, the Hawaiians have lost so much. The earlier speaker stated about Hawaii's dismal social statistics. Through this illegal action, the Hawaiian has lost his identity, culture, values, and pride in himself, and language. And this contributes largely to many Hawaiians being in disarray today. This is true of most aborigines, being in a state of confusion.

And I'm kind of wondering in closing, when Hawaii was taken, at that time, after the illegal overthrow, Hawaii was taken—Congress approved the annexation and acquisition of Hawaii based on national interest. The question I wonder today—the present Congress has the same kind of mentality: what is good for the national interest. And I hope the Hawaiians could gain some sense of fair play and justice. I hope we don't make it a political football, and address the problem in the name of justice.

Mahalo A Nui Loa.

Senator MATSUNAGA. Mahalo.

Our next witness is Mr. Gail Kawaipuna Prejean.

STATEMENT OF GAIL KAWAIPUNA PREJEAN

Mr. PREJEAN. Thank you all, Hon. Senator Matsunaga. And I again would like to take the time to express gratitude for your invitation, Senator, to testify before your Committee on Energy and Natural Resources, and also our Congressman Akaka—good to see you again, Dan. I'd also like to remark on our senior Senator who was here earlier today, and his remark—again condemning the findings of the majority commissioners.

I am Kawaipuna Prejean. I'm here today to speak as a citizen of humanity. Two people in my committee wish to also extend their best wishes to the group—Kupuna Pilani Paki, and another associate that has been unable to join us today—Kuhia Mel Poomanawanui. I also have a special friend, fellow humanitarian and spokesperson for the Noochenault Tribal Council—those are indigenous people from West Vancouver Island. Spokesperson George Watts back there—I'd like to have George raise his hand. Thank you very much for joining us today.

A few things that I'd like to abbreviate right now, just for submission into the report, is a newspaper article from the Maui News dated March 29, 1984, whose headlines state: "Major Flaws in Majority Study Commission Report." Again, what we are very concerned about was that this particular document is filled with erroneous history. If the pages weren't so slick, I could think of a good use for this—in some of the rural places on the other islands. If it was a little larger, it would probably be good for some bird cage bottoms. But as far as giving the true accuracy of historic facts, it does a disservice to this honorable group and also a disservice to the United States of America.

Our concern is that following the invasion of Hawaii in 1893, the dethroning of Queen Liliuokalani, in that coup d'etat or or armed intervention, followed by the theft—the theft of annexation in 1898, the indigenous people of these Islands—and all people have really not had a legitimate form of government.

I would also like to remind the people here that this Commission was a creation of Ronald Reagan who in fact, as I saw some of his agents running around the perimeter of Kawaihao Church, I sensed that they're already preparing his path of where he's going to visit in his stay here in the Islands in a few short days. I suggest that before he leaves Hawaii, that he hooponopono with the people that are waiting for almost 100 years for justice.

We are nearing less than a decade left before the 1 century of dishonor that the United States—with irrefutable evidence, and not rhetoric or myth—is implicated in what we consider the crime of the century. Yet nothing is done to alleviate the grievances compounded by this illegal, insidious deed. What concerns me is in your letter, Senator Matsunaga, in what did the Hawaiian people lose with the dethroning of Queen Liliuokalani. Basically we lost our freedom. We are now being held economic hostage; we are being held hostage in many ways from fulfilling our destinies and rights, an inherent right to self-determination. We are concerned because this State of Hawaii, we are supposed to set up 25 years ago, a celebration of the founding of the State of Hawaii. The native people have nothing to celebrate, for the Admission Act has never been fulfilled, as with the many numerous promises even found on the Supreme Court Justices of Washington, D.D., chiseled in cement, that says "Equal Justice Before the Law."

What I would also like to submit for the record is a very racist and narrow opinion by the attorney general's office of the State of Hawaii, saying in fact, a bill to set up a cultural park called 13 House bill 1319-84, is unconsitititutional, yet we have not found any legal mind to step forward and refute that statement. What I'm saying, Senator Matsunaga, is in fact we are concerned that our case has fallen on deaf ears for 91 years. Yet is fact, we continue to hear people talk about how we are all proud to be part of the

United States. And yet again, the United States has never lived up to all of the promises that they have made to us.

With the invasion of Hawaii in 1893, it seems like the United States embarked on grabbing a lot of other people's land. As a previous speaker noted, Stevens was known as an expansionist of colonizer. And his job was in fact to go and get out, and get people under the wing of the United States.

The clandestine conspirators that we call the CIA and their predescessors have now invaded Grenada, so naturally we thought, well, maybe they're looking for the 51st State, if they're following any type of example with Hawaii. Each year the CIA—just last week they're mining Nicaragua. We deplore those kind of foreign policies, and getting involved in business that is not ours. We hope the United States does return to its prestigious position of power and enlightenment by an apology to the people of Hawaii, and not just the indigenous people. Because all people suffer as one suffers injustice. And our people have suffered for far too long. They confuse the issue by using names like native Hawaiian, but in fact the first people of this land never did use the type of identification. But I thought about George Watts today, the thing we had in common was Cook the captain, that some refer to as Cook the pirate. Same like Columbus, who is supposedly who discovered India, but he is also a lost pirate that in fact misdentified the first people that occupied land now called America.

I like to remind America that their rent is overdue. It's time to apologize to the people, make attempt at restitution, so we in fact would know through history and have not been distractdd by attempts to revise history by many apologists, by many historic amateurs, that in fact for the United States to regain our respect, we need to have a public apology. And we need to have a hooponopono session. If in fact the President of the United States will be coming here, we're concerned because he gave us this Commission, a commission referred to be some of the individuals—one person, Carol Jenkins, as a "viper"; another person, Stephen Shipley, who ot only was vice-chairman of this particular putting together of this Commission, but also vice-chairman of the Federal-State Task Force which took over $78,000 to file suit in Federal district court to in fact point out the numersous allegations of mismanagement, misappropriation, of not only the Hawaiian Homestead. What I say now, Senator, if you will call upon the Justice Department to in fact look at the continuous breaches of trust that have gone on and are continuing to go on today.

And again, get after the culprits and excoriate the public officials that overzealously kick people in the behind when they are supposed to be the people to protect the welfare of all people.

And on behalf of all of our relations, I'd like to say mahalo, Sparky.

Senator MATSUNAGA. Our next witness is Mrs. Marion Morrison. Is Marion here? No.

Mr. Phil Kepano. Is Mr. Kepano here? Oh, Mrs. Kepano. Virginia. We'd be happy to hear from you.

STATEMENT OF VIRGINIA A. KEPANO

Mrs. KEPANO. Good afternoon, Sparky—Senator Matsunaga; we're very happy to see you're well, hale and hearty as usual. Representative Akaka, members of the committee, and everyone—good afternoon.

I'm going to take a minute, Senator Matsunaga, and explain a little about international law, as it's applicable to the Hawaiian situation. In the early encounter between Europeans and the people of the Americas, the question of indigenous legal and political rights was recognized as a question of morality and international law. Bartholomew De Los Castos, one of the greatest of all publicists in the 1500's, and Victorio Francisco De Vatorio, one of the fathers of international law and a theological at the University of Salamanca, Spain, which is still alive and well today, affirmed that the indigenous peoples of the Americas were entitled to enjoy civil and political rights. They were the true owners of their lands. Spanish rights were limited to rights of evangelism, travel, and trade. Spain, however, could assume rights over the Indians and their lands if it were for the benefit of the tribe. This is very important, if it were to the deficit of the tribe. On this narrow basis, the doctrine of trusteeship was developed, as the legitimation of colonialism.

The Spanish legacy has two parts. The first is the moral and intellectual tradition of De Los Castos and Vatorio, a clerical tradition of support for Indians and indigenous people has existed since the time of Los Castos, the 1500's.

It reappears in the establishment of the Aborigines Protection Society in England in 1823, and took secular form in modern organizations such as the International Bureau for the Defense of Indigenous People, founded in Geneva in 1913, and more recent organizations such as the World Court at The Hague, the International Work Group for Indigenous Affairs, and Survival International. Some of the international laws, stated very simply, are:

Prior discovery. Discovery alone does not give rights in international law.

Religious or civilizing mission. While these concepts were important ideological justifications for colonialism, they are not acceptable bases in modern international law. Even the papal grant of 1493 was rejected as a basis for the acquisition of territories by Francesco DeVatorio in the early 16th century, as I quoted before; and concepts of trusteeship and protection have often been used as justifications for colonialism, but they fail on legal grounds of international laws.

Cession. The acquisition of populated territory is not colonialism, but it is the result of the exercise of the right of self-determination by a population. The decision to become part of another state can take the form of formal treaty of cession, or informal acquiescence. It is very difficult to argue that the Hawaiian people in 1893 had any part in the overthrow of their own government which led to the cession in 1899.

I would like to say that the native Hawaiians must be placed in their true historical perspective. This perspective is entirely unique, within the confines of the United States. The illegal overthrow of the monarchy in Hawaii was an illegal act of war perpetrated by an agent of the United States taking a unilateral, unofficial position. This is unfinished business under the Constitution of the United States, and under international law.

The illegal assumption of cession by an illegally constituted body, a joint session of Congress, rather than a recognized government-to-government, is a litany of shame. This must in all conscience be settled once and for all. The United States can no longer go before the world and pretend a concern for the native peoples of the South Americas when the concern of their own native people within their own borders have not been properly addressed. As Mr. Getches said earlier, the native Hawaiian is the only so-called native American who has not had their day in the courts of the United States.

A litany of errors of wrongful doing of illegal acts has been a well-documented historical part and it lives within the hearts and minds of the Hawaiian people—over 91 years of shame, of sorrow. A famous jurist said once, "Justice delayed is justice denied." The litany—how long, how long?

The minority report of volume II of the President's commission constitutes the mana'o of many organizations who have taken the time and effort to scrutinize and critique volume I. We have all come here today to speak against the oversights, omissions, and inequities represented in volume I. Our ohana found 160 errors—160 iniquities in the first 14 pages. We, therefore, recommend that the committee accept volume II as the official findings document.

We wish to say, thank you for giving us the opportunity to speak today, and we certainly want you to scrutinize volume I and accept volume II.

Thank you very much.

[The prepared statement of Mrs. Kepano follows:]

APRIL 16, 1984

TESTIMONY

SENATOR "SPARK" MATSUNAGA   SENATOR "DAN" INOUYE
REPRESENTATIVE "DAN" AKAKA   REPRESENTATIVE "CEC" HEFTEL

NATIVE HAWAIIAN CLAIMS STUDY COMMISSION REPORT ON OAHU, HAWAII

ALOHA AUIMALA IA OUKOU:

THANK YOU FOR ALLOWING ALL OF US TODAY TO PARTICIPATE IN THIS HEARING... I AM VIRGINIA KEPANO, A MEMBER OF PAPOKOLEA COMMUNITY ASSOC., AN HAWAIIAN HOMESTEADER OF FOUR YEARS... MY HUSBAND, PHILIP S. KEPANO, IS ONE HUNDRED (100%) PERCENT HAWAIIAN AND WE HAVE FIVE GRANDCHILDREN ALL OF WHOM ARE MORE THAN FIFTY (50%) PERCENT NATIVE HAWAIIAN... WE ARE HERE TODAY TO SHARE MANAO (THOUGHTS) ABOUT HAWAIIAN AFFAIRS... I WOULD LIKE TO TAKE A DIFFERENT DIRECTION FROM THE PREVIOUS SPEAKERS... I WOULD LIKE TO DISCUSS THE HISTORY OF INTERNATIONAL LAW AS IT IS APPLICABLE TO THE HAWAIIAN QUESTION....

IN THE EARLY ENCOUNTER BETWEEN EUROPEANS AND THE PEOPLES OF THE AMERICAS, THE QUESTION OF INDIGENOUS LEGAL AND POLITICAL RIGHTS WAS RECOGNIZED AS A QUESTION OF MORALITY AND INTERNATIONAL LAW... BARTOLOME DE LAS CASA THE LEADING PUBLICIST RECORDED THE BEGINNINGS OF CLERICAL SUPPORT FOR INDIANS...IN 1511FRANCISCO VITORIA, ONE OF THE FATHERS OF INTERNATIONAL LAW AND A THEOLOGION AT THE UNIVERSITY OF SALAMANCA IN SPAIN, (VITORIA) AFFIRMED THAT THE INDIANS WERE ENTITLED TO ENJOY CIVIL AND POLITICAL RIGHTS..... THAT THE INDIANS WERE THE TRUE OWNERS OF THEIR LANDS.... SPANISH RIGHTS WERE LIMITED TO RIGHTS OF EVANGELISM, TRAVEL AND TRADE...SPAIN, HOWEVER, COULD ASSUME RIGHTS OVER THE INDIANS AND THEIR LANDS IF IT WERE TO THE BENEFIT OF THE TRIBES...ON THIS NARROW BASIS THE DOCTRINE OF TRUSTEESHIP DEVELOPED, AS A LEGITIMATION OF COLONIALISM... FROM THE WORK OF VITORIA AND DE LAS CASA CAME THE "NEW LAWS OF THE INDES" OF 1542, STATING THAT THE INDIGENOUS PEOPLES WERE TO BE PROTECTED IN THEIR LIBERTY AND PROPERTY...

THE SPANISH AND PORTUGUESE LEGACY HAS TWO PARTS..... THE FIRST IS A MORAL AND INTELLECTUAL TRADITION OF DE LAS CASAS AND VITORIA...AND A CLERICAL TRADITION OF SUPPORT OF INDIANS HAS EXISTED SINCE THE TIME OF DE LAS CASAS....(THE INVOLVEMENT OF THE "CHURCH" IN THE SOUTH AMERICAS HAS PRECEDENT SINCE THESE EARLY TIMES). IT REAPPEARED IN THE ESTABLISHMENT OF THE ABORIGINES PROTECTION SOCIETY IN ENGLAND IN 1823, AND TOOK SECULAR FORM IN MODERN DAY ORGANIZATIONS SUCH AS

THE WORLD COURT AT THE HAGUE, HOLLAND, HOLLAND, (PERMANENT COURT OF INTERNATIONAL JUSTICE) THE INTERNATIONAL BUREAU FOR THE DEFENSE OF INDIGENOUS PEOPLES, FOUNDED IN GENEVA IN 1913 AND MORE RECENTLY AS THE INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS AND SURVIVAL INTERNATIONAL...

INTERNATIONAL LAW CLEARLY STATES:

A. PRIOR DISCOVERY. DISCOVERY ALONE DOES NOT GIVE RIGHTS IN INTERNATIONAL LAW....

B. RELIGIOUS OR CIVILIZING MISSION. EVEN THE PAPAL GRANT OF 1493 WAS REJECTED AS A BASIS FOR THE ACQUISITION OF TERRITORIES BY FRANCISCO DE VITORIA IN THE 1500'S... CONCEPTS OF TRUSTEESHIP AND PROTECTION HAVE OFTEN BEEN USED AS JUSTIFICATIONS FOR COLONIALISM, BUT THEY FAIL AS LEGAL GROUNDS...

C. CONQUEST. CONQUEST IS ONLY LEGALLY VALID IN THE CASE OF A "JUST" (?) WAR.... AS WELL, UNDER THE MODERN LAW OF WAR, CONQUEST IS NOT A BASIS FOR CONTINUING POSSESSION OF TERITORY...

D. CESSION. THE ACQUISITION OF POPULATED TERRITORIES IS NOT COLONIALISM WHEN IT IS THE RESULT OF THE EXERCISE OF THE RIGHT OF DETERMINATION BY THE POPULATION... THE DECISION TO BECOME PART OF ANOTHER STATE (COUNTRY) CAN TAKE THE FORM OF A FORMAL TREATY OF CESSION OR INFORMAL ACQUIESCENCE.....
IT IS VERY DIFFICULT TO PUT THE "HAWAIIAN","CESSION" INTO THIS LEGAL CATEGORY.. IT IS VERY DIFFICULT TO ARGUE THAT ANY INDIGENOUS ENCLAVE POPULATIONS GAVE ANY FREE CONSENT TO THE COLONIAL POWERS... THE U.S. DECISIONS FOR COLONIAL ACQUISITION USED A COMBINATION OF DISCOVERY AND CESSION.... NATIVE HAWAIIANS MUST BE PLACED IN THEIR OWN TRUE HISTORICAL PERSPECTIVE... THIS HISTORICAL PERSPECTIVE IS UNIQUE IN THE UNITED STATES.... THE ILLEGAL OVER-THROW OF THE MONARCHY OF HAWAII WAS AN ILLEGAL ACT OF WAR PERPETUATED BY AN OFFICIAL AGENT OF THE U. S. TAKING A UNILATERAL POSITION AGAINST A LEGALLY CONSTITUTED GOVERNMENT.... A GOVERNMENT RECOGNIZED BY ALL THE MAJOR POWERS OF EUROPE AND ALL THE MAJOR GOVERNMENTS IN THE EAST....IE: JAPAN, CHINA, INDIA ETC.., THIS UNFINISHED BUSINESS AIDED IN AND ABETTED BY ILLEGAL REPRESENTATIVES OF THE U.S. IS TOTALLY ILLEGAL UNDER INTERNATIONAL LAW.... THE ILLEGAL ASSUMPTION OF CESSION BY AN ILLEGALLY CONSTITUTED BODY IE: JOINT-SESSION OF CONGRESS, RATHER THAN A RECOGNIZED GOVERNMENT TO GOVERNMENT CESSION IS A LITANY OF SHAME; THIS MUST IN ALL CONSCIENCE BE SETTLED ONCE AND FOR ALL. THE U.S. CAN NO LONGER GO BEFORE THE WORLD AND PROFESS A "CONCERN" FOR THE NATIVE PEOPLES OF THE SO. AMERICAS, WHEN THE CONCERNS OF THOSE NATIVE PEOPLES WITHIN THEIR OWN BORDERS HAVE NOT BEEN PROPERLY ADDRESSED....

> THE NATIVE HAWAIIAN HAS BEEN THE ONLY SO-CALLED NATIVE AMERICAN THAT HAS NOT HAD THEIR DAY IN THE COURTS OF THE UNITED STATES.....THE LITANY OF ERRORS, OF WRONG-FUL DOINGS, OF ILLEGAL ACTS HAS BEEN ONLY TOO WELL-DOCUMENTED HISTORICALLY.. IT HAS BEEN INDELIBLY IMPRINTED IN THE HEARTS AND MINDS OF THE HAWAIIAN.... OVER 91 YEARS OF SHAME, OF SORROW, OF DESPAIR... A FAMOUS JURIST SAID, "JUSTICE DELAYED IS"JUSTICE DENIED" THE LITANY, HOW LONG, HOW LONG?

THE MINORITY REPORT OR VOLUME II OF THE COMMISSIONS REPORT INCORPORATES MUCH OF THE "MANAO" OF MANY ORGANIZATIONS BUT NOT ALL THE "MANAO"... THESE ARE BOTH, VOLUME I, AND VOLUME II IMPERFECT DOCUMENTS.. FOR EXAMPLE ANY DOCUMENT PERTAINING TO THE HAWAII-POE THAT DOES NOT ADDRESS THE SPIRITUALITY AND THE 'RELIGION' OF THE POE HAWAII IS NEITHER VALID NOT TRUE HISTORY OF THE CULTURE TRADITION AND PSYCHE OF THE POE HAWAII... HOWEVER, WE AS THE KEPANO OHANA WOULD LIKE TO REQUEST THAT VOLUME II BE ACCEPTED AT THIS TIME AS THE OFFICIAL FINDING DOCUMENT RATHER THAN VOLUME I WHICH IS TOTALLY UNACCEPTABLE....

MAHOLO

Virginia A Kepano
VIRGINIA A. KEPANO
Philip S. Kepano
PHILIP S. KEPANO

Senator MATSUNAGA. Our next witness is Puanani Kealoha.

STATEMENT OF PUANANI KEALOHA

Ms. KEALOHA. I'll read this to you, and have copies submitted.

Aloha.

Senator Sparky Matsunaga and committee members. Once again my people of Hawaii and myself, Puanani Kealoha are being studied for still another commission report. Once again we are here to give testimony of our conditions, needs, wants, et cetera and so forth. The purpose for the official record, this is my testimony. I am sick and tired of being studied. I feel like a specimen in a laboratory, in a microscope. There are already studies upon studies from these public libraries, the Library of Congress, concerning in every detail of the Hawaiian people or the native Hawaiian race as interpreted by the American Government.

My main question to you, Senator Matsunaga, and committee members, is: Are any one of you actually reading and understanding these studies? The only people I can really see benefiting from all these studies are the people being paid to do the studies. The final reports are useless to us, if none of you people don't pick it up to read it and make it work. Millions of dollars are pumped into these studies. All the conditions, wants, needs, and desires of my people are already a matter of official record. You all have access to these records. Our conditions have not changed since the last study we had. We still want our land, our birthright, and everything else that rightfully belongs to us—nothing more, nothing less.

Our education, social, housing, and economic conditions is not exactly what you could or would celebrate at the grand jubilee of statehood. I mean to make my point simple and sweet. I feel it is enough time used on study, more than enough money used on studies. It is way past time for you and whoever necessary, to take action with the studies your committee already has available access to.

You would have to literally live with us to get a deeper perception. Let us all face the recorded historical facts, the truth of all the injustices inflicted upon my people by the U.S. Government. Let us all start to make things right. Let us make the necessary corrections so that my people can continue on with life as a beautiful, proud, rich, and cultural heritage and dignified race. It is you, Sparky Matsunaga, that I send my testimony to indicate your congressional colleagues on the needs and desires of my people.

Thank you.

Senator MATSUNAGA. Thank you very much, Puanani. And while the claim can be made that studies have been made, that the native Hawaiian has been overstudied, unfortunately many of the studies are adverse. And it's for that reason that we are holding this hearing here today, so that we can correct them.

If we were to go according to volume I of the study—of the Commission which is appointed by President Reagan, the native Hawaiian has no claim whatsoever. What we want to do is to prove that volume II speaks the truth, and not volume I. And you can't do that unless we have the type of hearings we have had today. It's been a real education for me, and I'm sure for others who have been sitting in this hall now since 10:30 this morning.

I might say that it's only since 1974 that we really started this movement toward reparations for native Hawaiians, and things are moving now. So we've got to do everything possible to prove to the majority of the Members of Congress that the native Hawaiian deserves justice under law. And we hope that these hearings will bring such a result. You know, I introduced a bill to establish an Academy of Peace 21 years ago. And everybody loves peace. Let's have peace. But I can't get my bill out of the Senate.

But we're going to get it. I've been pulling. And so we finally got it out of the committee and it's pending now on the Senate floor and we are going to pass it, believe me. We're not going to give up, just as we are not going to give up on the Native Hawaiian Claims Act.

Our next witness is Mr. Bill Kaiana. Is Bill here? OK. Bill, we'd be happy to hear from you.

STATEMENT OF BILL KAIANA

Mr. KAIANA. Aloha. My name is Bill Kaiana. I'm Eskimo-Indian-Hawaiian, born in Alaska. It has been mentioned that Congress did not define aboriginal in its reference to the claims in Alaska. But I do want to point out that Congress did see to it that Alaskans spelled out their extinguishing of aboriginal rights in Alaskan Native Claims Settlement Act, to not make that same mistake. The two other mistakes that were made due to the haste of Congress and our mucky-mucks who said they were representing all our people were: One, we retain our sovereignty; and, two, there has been no due process. Under the fifth amendment, no person can be denied the right to the aina without due process of law. Therefore, our land claim is illegal, and should be thrown into the garbage where it belongs.

I am an advocate of the people's sovereignty. It applies the same here as in Alaska, Canada, and for all aboriginal people of the world. Don't let anybody kid you—there is nothing wrong with being indigenous sovereigns. At this moment, my people are getting ready to enter Congress this June with recommendations on changes that must take place within our own land claims. Place close attention on learning from our experiences. I would say we are 10 years ahead, if not more, and everything is relative. "Reparations" is a word that is more foul than any four letter word that I have ever heard. Do not speak them. Reparations simply would rubberstamp what the U.S. Government is trying to say, that you are a conquered people. Under international law, in order for another country to come into another country and raise their flag, they must either conquer that country by force or be accepted. Hawaiians are not a conquered people, and furthermore do not accept. You are no more American than you are Indians. Each and every one of you are sovereigns, and must be dealt with right down to the last person. All it takes is one person to say "No," and it's thrown out the window. You must learn to say "No." It is imperative that an international review be made to assess the conditions here, to help the Hawaiians resolve the issues. The U.S. Government is too emotionally involved.

I am here as a liaison and to offer kokua between you, my ohana here, and my ohana in Alaska. Let's exchange and stand together. Our enemies as well as our objectives are the same—home rule under a self-determination.

Senator **Matsunaga**. Our next witness is Mr. Arthur Trask.

STATEMENT OF ARTHUR TRASK

Mr. **Trask**. My beloved Senator, and my beloved Congressman, we're so happy that you're here at home to learn what is in the hearts of the Hawaiian people. At the last OHA election, I went around not with the second volume but with the first volume that was out. I went over all the errors, and I explained the bloody system as I struck it on the floor. Somebody picked it up, which is usually written—down on the floor and all over up to the ceiling. Never in American history, I daresay, was the Congress so abused by such a Hollywood lie as this Reagan-tortured commission that was appointed to twist the historical truth about an innocent and friendly people and tell such diabolical, filthy lies. The Congress should abhor it and the ghost of Grover Cleveland should spit on it. And when a haole spits, brother, he spits into a spittoon 10 miles away and he hits the mark, and that's what is deserving in this case. I can't think of anything that would express the hatred and the cause for such dismay, of this dishonesty, and such filthy politics. It gets up my keester—and I'm not talking about Reagan at all, I'm talking about my own proud keester, and the proud keester of the Hawaiian that has been so abused by this filthy politics.

Let's understand, this is the American Government. Politics is important; politics is life. Nothing thrills a Hawaiian more than politics—played with some grace, and charm, and a little smile, a little hulakui, a toast which says inu meka olelo noonookupono. Let us drink with intelligence, charm, grace, and learn from each other what it's all about.

What I wish to say and I have submitted to your eloquent counsel, Mr. J.P. Beirne—we are remote classmates; I graduated from Georgetown about 46 years ago, I guess, before him. But anyhow, he's a 1972 and I'm a 1936. But I'm 74 and I feel like you, Congressman—I mean Senator, like what the God of the Christians said to you: you're little early for heaven; get back to Hawaii and get it through the god damn fight for reparations. And all of the Hawaiians over 70 going to be with you until we get it.

I have not—I have given this—an editorial that was called by the Star-Bulletin "Nagging Hawaiian Questions," dated February 10, by me, that was printed in the Star-Bulletin. Just the week before that, they printed the most extraordinary document in all of American history, because there was no document as eloquent as the document by honest Grover Cleveland. Do you realize that there's no other President of the United States that was called honest, except for Honest Abe? Honest Grover Cleveland. So I did submit this to you.

But I thought, gentlemen, it's not what we say here that's going to count. It's what we say in the record, that those kind Senators, those distinquished men of your committee who, under oath, will try to redress American honor—it's for them that we talk here, and I want to say these few remarks. We're Americans. But America is a marvelous program of decency with the genius and style that is promotive of the human spirit and the grandeur of the human development. We are aware of that, because that is the Hawaiian nature. Now, what were the Hawaiian people? Did life begin in 1893? No, 1893 was just the cause of a revolting indignity that is still concerning the American conscience, and undecided. It concerns the American conscience. What did we do? We can't get away from it.

Just yesterday, if you please, on the editorial page by Stanley Karnow, "China—Trip Will Test Presidential Diplomacy of Reagan." The question is the difficulty that America has with Formosa or Taipei—Taiwan. China says its theirs. America says, well, they're independent. But look how cutely Hawaii comes into the picture—with respect to this thing. All Chinese, including the anti-Communists who feel—who fled to Taiwan a generation ago, are united in their conviction that the island is an integral part of China. As they often point out, separating Taiwan from China would be tantamount to granting autonomy to Hawaii. Let's understand, straight—if we're going to answer our conscience of man, and not of God, and the Hawaiians had 400,000 gods and goddesses—Hawaii is not desirous of autonomy—getting restoration of its kingdom. But in the imaginative American system, we can establish what we have now—the aloha claim. We have the royal family now in charge of the Iolani Palace. We have every aspect and our community attitude is one of regard, and warmth, and aloha to the Hawaiian people. When the issue for—let's have our tourists in. It's nothing but an address to the Hawaiian people, come on with your charm and your sweetness and your eloquence and your style that is so Italian. We're bringing here 4 million people or 5 million people. I was on statehood from the time it was started in 1936—longer than anybody. We got statehood; it was an impossible dream—impossible dream. I was at the University of Southern California for 2 years when the *Massie* case occurred, and to me, I had to come back to Hawaii and learn about this, because when the admiral whose nephew was the one who raped Mrs. Massie covered up all this business. and the police report destroyed. Yes, ladies and gentlemen, I felt we were not safe. And I was there in Los Angeles—some of you are from California—where the Hearst newspapers had all us Hawaiians branded—all of us Hawaiians branded. I felt then that I had to come to Hawaii and work for statehood, so it could be independent and not scared of some little farmboy who gets a little power in carpets of Alabama who calls us black niggers.

When I was in Washington, you couldn't go—a colored person couldn't go in a restaurant, couldn't go into a hotel, couldn't go into a movie—and of course, the streetcars are another thing that you may all know about. But I know the situation, so statehood, I say to you ladies and gentlemen, and tell the Congress of the United States that the greatest day of Hawaii's life was statehood achieved—the greatest. We had to get statehood. And there's been delay in Hawaiian complaints and desire to fight, because we didn't have the weapons to fight with. that's why there's been a delay, that people have been complaining about. That's why I want to explain these things, and so I want our Congress to know, now that we have statehood, we'll stand up with the best of them and give them what they want—and they want honesty and they want America to be noble, and we want America to be noble indeed.

Mahalo.

Senator MATSUNAGA. Thank you. You realize, Arthur, we just gave you double time.

Our next witness is Marie Olsen. Is Marie here?

STATEMENT OF MARIE OLSEN

Ms. OLSEN. Hon. Senator Matsunaga, and Congressman Akaka, aloha.

I want to thank you for according us this great privilege of having us here to speak to you, from the U.S. Congress.

My name is Marie Kekahililaulani Olsen. I am a beneficiary lessee living on Nanakuli Hawaiian Home Lands since the summer of 1964. I am 87.5 percent of the blood of my ancestors previous to 1778. I am chairman of the Native Hawaiian Land Trust Task Force and representative member of the Nankuli Hawaiian Homesteaders Association, Inc. My testimony is on behalf of those, my associates, the elders, and many of my ohana and friends who know nothing of what is developing around and about them within our native Hawaiian communities.

Incidentially, at this time, I'd like to later submit a full report of this abridged testimony.

Since Robert Wilcox and Prince Kuhio did not institute any pursuit to justify the overthrow of the kingdom, I believe the majority report has that well in hand.

In the year 1848, when the Great Mahele came into existence, the Hawaiian commoners were unjustly dispossessed of their traditional land, thus steadily disrupting their culture, skills, arts, language, and lifestyle.

On July 9, 1921, the 67th Congress of the United States of America enacted the Hawaiian Homes Commission Act of 1920, as amended. This bill was introduced to Congress by the then-Delegate to Congress, Prince Jonah Kalanianaole, and a commission of Hawaii's territorial legislators, to acquire some lands for the many native Hawaiians who were landless and living in the tenements of Honolulu. It was recommended that these Hawaiians, who were unjustly deprived of their share of the Great Mahele—division of lands—were to be helped.

Therefore, in order to at least justly serve these native Hawaiians, the Committee on the Territories and Insular Affairs decided to define the term, native Hawaiian, to mean "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778"—which was strongly supported by the territorial legislators, which majority members were Caucasians.

But today, it is sad for me to realize that the movement to redefine the term native Hawaiian is by our own people, that the term native Hawaiian should read to mean "any descendant of the blood of the races inhabiting the Hawaiian Islands previous to 1778"—even if she or he was 1/32 percent of the blood.

Congress designated 200,000 acres of marginal public lands to help these folks get out of the plight they were in through no fault of their own. After 60 years of this so-called helpful program, we find today—1981-82 Department of Hawaiian Home Lands Report—that only 26,062 acres of the 200,000 acres designated in 1921 is awarded to 3,077 native Hawaiians. And a large number of these lands are held in lease by one qualified 50-percent blood quantum spouse. This is a great concern because this is not their fault. Of these lands, 163,518 acres are leased out under general leases, licenses, community pasture and others, to non-Hawaiians. This is a concern.

In the Admission Act, 1959, Congress set up in section 5(f) four purposes for the benefit of the general public, and one purpose for the "betterment of the conditions of the native Hawaiian" as defined in the Hawaiian Homes Commission Act. We are now celebrating the 25th year of our statehood. I do not see the condition of the native Hawaiian as being any better, according to surveys and statistics. The Hawaiian problem goes on. It is the Hawaiians with the higher blood quantum that really have the problems, and it is they who have quietly bent to the injustices handed them through our Hawaiian history. I and my constituents do not believe that the native Hawaiian problems will be solved by redefining the term, native Hawaiian—we see it increasing.

I, personally have a grave concern, and that is having my future and destiny planned for me without consulting me. And so I am appreciative for this opportunity to express my thoughts and concerns to this honorable body.

However, I would like to ask, if I may, that you keep the past Secretary of Interior, Cecil Andrus' recommendation to Governor Ariyoshi in mind, that the "initiatives and inputs from the native Hawaiian community be included"—he was referring to the makeup of the Federal-State task force. And as Secretary of the Interior Franklin K. Lane said in 1920 to the Committee of the Territories: "Good administration requires honest appraisement * * * a compliance with the spirit and the purpose of the law, and a rigid loyalty to the enforcement of its conditions."

Thank you for this opportunity to express my opinions. Thank you.

Senator MATSUNAGA. It is past 5 o'clock, now. And we were scheduled to quit at 5, and of course, our stenographer is working at a frantic pace. We haven't had any breaks. If you will limit your testimony strictly to 5 minutes—when the bell rings, you stop. We have 28 more witnesses left, which means 2½ hours. If I cannot pound my gavel on you after 5 minutes, then we're going to have to postpone the remainder of the hearings, perhaps to Thursday. I don't know how many of you here still want to postpone it?

Well, let's see—how many of you here are still waiting to testify? Let's see your hands. Well, maybe we can do it.

We'll take a 5-minute break now, and then come back and see if we can finish within the next hour.

[A recess was taken.]

Senator MATSUNAGA. The committee will please come to order.

Our next witness is Mr. John Carroll, former member of the State legislature. John, we'd be happy to hear from you.

STATEMENT OF JOHN CARROLL

Mr. **Carroll**. Thank you very much. Senator Matsunaga, and Representative Akaka, for this opportunity to testify. And I particularly commend Senator Matsunaga, being a member of the minority, a role I know he's not very used to yet, for coming out and taking the flag against this haole administration's position.

I'm here today to testify briefly with respect to a resolution that was passed by the Republican Party in 1983 when I was chairman of the party, and I'd like to read this into the record, briefly, if I may, Senator.

Senator **Matsunaga**. Please proceed.

Mr. **Carroll**. Whereas, the native Hawaiians have been included and identified as native Americans in recognition of their unique and special realtionship to the United States, and as an indigenous people, and;

Whereas, a result to the good conscience of the American people speaking through the Congress, redress and remedy have been granted to other native Americans for injustices and harm done to them, and;

Whereas, the Congress of the United States has indicated its interest in the pursuit of seeking resolution to possible claims by native Hawaiians for the losses and damages which resulted from the overthrow of the legal government of the Kingdom of Hawaii in 1893, and;

Whereas, the Congress enacted Public Law 95-566 and thereby established a Native Hawaiians Study Commission to advise the U.S. Senate Committee on Energy and Natural Resources and the U.S. House Committee on Interior and Insular Affairs on the issues of concern to native Hawaiians, and;

Whereas, the Republican Party of the State of Hawaii also has a deep and abiding commitment to the fulfillment of national purposes relating to native Hawaiians and truly affecting all of the citizens of Hawaii;

Now therefore, it be resolved by the Republican Party of Hawaii meeting in convention on May 28, 1983, that the minority report of the Native Hawaiians Study Commission be given timely and full consideration by the Congress of the United States.

And that's followed by the whereases in transmittal which I won't bore you with. And Senator, we will submit copies again to you and anyone else you indicate.

Senator **Matsunaga**. Thank you very much.

Mr. **Carroll**. Thank you very much.

Senator **Matsunaga**. Thank you, John.

Our next witness is Winona Freitas, Papakolea Community Association

STATEMENT OF WINONA A. FREITAS

Ms. **Freitas**. Hon. Senator Spark Matsunaga, and Congressman Danny Akaka, thank you for allowing me to be here today.

My name is Winona A. Freitas. I am a native Hawaiian of 50 percent Hawaiian blood, and I live on the Hawaiian homestead of Papakolea, Oahu. I have been active in the affiars of the Hawaiian Homes Commission Act since 1968, and I am speaking on behalf of the members of the Papakolea Community Association which is comprised of homesteaders of Papakolea and Kewalo. For the record, Papakolea is a name given by the first Hawaiian settlers who lived on lands designated in the Hawaiian Homes Commission Act as Auwaiolimu.

My testimony is divided into two parts. Part I addresses volume I of the Native Hawaiian Study Commission Report. Part II addresses volume II, which deals with the recommendations and comments affecting the beneficiaries of the Hawaiin Homes Commission Act.

Part I. The Report of the Federal-State task force, although a well-written document, failed to include testimony or concerns of the native Hawaiians which were made at their hearings in May 1983. We would like these initiatives be known for your consideration and congressional recording:

The Hawaiian Homes Commission Act requires 50 percent Hawaiian blood quantum for lessees as well as successors. Presently, there is a great concern about eviction of nonqualifying spouses and/or children of deceased lessees. The State of Hawaii, in responding to the concern in 1982 passed a bill to ask Congress to lower the blood quantum for successors to one-fourth Hawaiian. Our association, at that time, requested a moratorium on evictions of nonqualifying successors. The Federal-State task force, in its report, recommended congressional approval as soon as possible. We do not feel this is a permanent solution.

We request that the only action Congress take is to declare a moratorium and direct the Hawaiian Homes Commissioners to meet with its beneficiaries to determine a viable solution.

Another concern of homesteaders is the 99-year lease law of the Hawaiian Homes Commission Act. We asked the Federal-State task force to consider a lifetime lease for as long as there are successors to the original lease. The Federal-State task force did not take any action on this subject.

We would like Congress to favor a change to this law for the simple reason that it is in line with the American homesteading program and the kuleana—right, property, claim—land concept of the Hawaiian culture.

We raised the question of breach of trust in the useage of the 30 percent State sugar receipts which was established by Congress in 1920 as the major funding source for the purposes of development and loan projects under the Hawaiian Homes Commission Act. Between 1965 and 1976, of $5 million transferred to the Department of Hawaiian home lands by the State, only $1.4 million was actually for the purposes of the Hawaiian Homes Commission Act. $3.6 million was diverted to the State department of education. Between 1976 and 1978, no funds from the sugar receipts were provided by the State, in spite of the fact that the applicant list for awards was well over 4,000. Finally, in 1978, the State constitutional convention established the 30 percent State sugar receipts as a permanent funding source for the department. While enhancing the Hawaiian program on one hand, it hindered the speedy settlement of applicant awards on the other. It created another diversion of the funds by establishing a new fund called the native Hawaiian rehabilitation fund, a program solely for educational, economical, political, social and cultural purposes—a program duplicated by the Office of Hawaiian Affairs and Alu Like. Thousands of dollars are now wasted on individual grants for business, educational and cultural programs while homesteaders are in direct need of funds for emergency replacement homes. In the last quarter, October to December of 1983, $49,775 was released—the price of a replacement home for a family presently living under unsafe and/or unsanitary conditions.

We request your committee examine the deliberate manipulation of the sugar receipt funds and take corrective action to divert the flow of the funds back to the original purposes of the act, which is development and home/farm loans.

Senator **Matsunaga**. Would you now summarize the remainder of your statement?

Ms. **Freitas**. I would like to at this time request that the native Hawaiian definition not be changed to a single definition. I urge that volume II is the document of truth, but there are two points in there that we are not in favor of, and that is the single definition and the selling of the land in fee simple. The reasons are because they are detrimental to the beneficiaries of the Hawaiian Homes Commission Act. We ask that we do not make any change at all.

Thank you.

[The prepared statement of Ms. Freitas follows:]

Honorable U.S. Senator Spark Matsunaga, Chairman and members of the Energy and Natural Resources Committee.

My name is Winona A. Freitas. I am a native Hawaiian of 50 percent Hawaiian blood and I live on the Hawaiian homestead of Papakolea, Oahu. I have been active in the affairs of the Hawaiian Homes Commission Act since 1968, and I am speaking on behalf of the members of the Papakolea Community Association which is comprised of homesteaders of Papakolea and Kewalo. For the record, Papakolea is a name given by the first Hawaiian settlers who lived on lands designated in the Hawaiian Homes Commission Act as Auwaiolimu.

My testimony is divided into two parts. Part I, addresses the Native Hawaiian Study Commission Report, Vol I, Part II, Review of Hawaiian Homes Commission Programs in reference to the Report of the Federal-State Task Force on the Hawaiian Homes Commission Act. Part II addresses the Native Hawaiian Study Commission Report, Vol II, Part III, dealing with comments and recommendations affecting the beneficiaries of the Hawaiian Homes Commission Act, 1920.

Part I. The report of the Federal-State Task Force, although a well-written document, failed to include testimony or concerns of the native Hawaiian which were made at their hearings in May 1983. We would like these "initiatives" be known for your consideration and congressional recording.

a. The Hawaiian Homes Commission Act requires 50 percent Hawaiian blood quantum for lessees, as well as successors. Presently, there is a great concern about eviction of non-qualifying spouse and/or children of deceased, lessees. The State of Hawaii, in responding to the concern in 1982, passed a bill to ask Congress to lower the blood quantum for successors to one-fourth

Hawaiian. Our association, at that time, requested a moratorium on evictions of non-qualifying successors. The Federal-State Task Force, in its report, recommended Congressional approval as soon as possible. We do not feel this is a permanent solution.

RECOMMENDATION: We request that the only action Congress take is to declare a moratorium and direct the Hawaiian Homes Commissioners to meet with its beneficiaries to determine a viable solution.

b. Another concern of homesteaders, is the 99-year lease law of the Hawaiian Homes Commission Act. We asked the Federal-State Task Force to consider a lifetime lease so long as there are successors to the original lessee. The Federal-State Task Force did not take any action on this subject.

RECOMMENDATION: We would like Congress to favor a change to this law for the simple reason that it is in line with the American homesteading program and the kuleana (right, property, claim) land concept of the Hawaiian culture.

c. We raised the question of breach of trust in the useage of the 30 percent state sugar receipts which was established by Congress in 1920 as the major funding source for the purposes of development and loan projects under the Hawaiian Homes Commission Act. Between 1965 and 1976, of $5 million transferred to the Department of Hawaiian Homes Lands by the State, only $1.4 million was actually used for the purposes of the Hawaiian Homes Commission Act. $3.6 million was diverted to the State Department of Education. Between 1976 and 1978, no funds from the sugar receipts were provided by the State, in spite of the fact that the applicant list for awards was well over 4,000. Finally, in 1978, the State Constitutional Convention established the 30 percent state sugar receipts as a permanent funding source for the Department. While enhancing the Hawaiian program on one hand, it hindered the speedy settlement of applicant awards on the other. It created another diversion of the funds by establishing a new fund called the Native Hawaiian Rehabilitation Fund; a program solely for educational, economical, political, social and cultural purposes. A program duplicated by the Office of Hawaiian Affairs and Alu Like. Thousands of dollars are now wasted on individual grants for business, educational, and cultural programs while homesteaders are in dire need of funds for emergency replacement homes. In the last quarter, Oct-Dec 1983, $49,775 was released; the price of a replacement home for a family presently living under unsafe and/or unsanitary conditions.

RECOMMENDATION: We request your committee examine the deliberate manipulation of the sugar receipt funds and take corrective action to divert the flow of the funds back to the original purposes of the Act which is development and home/farm loans.

d. Finally, with the exception of paragraph b above, we support Federal-State Task Force member Kamuela Price's dissent on the recommendations that the United States Congress be requested to change or modify the Hawaiian Homes Commission Act at this time. We, too, fear that "Congress might inadvertently or otherwise abort the Hawaiian Homes Commission Act or change it in a manner detrimental to the best interests of the beneficiaries". We also agree with him that no new land exchanges which were being considered by the Hawaiian Homes Commission since 1980 be approved based on reasons provided in the Task Force report.

RECOMMENDATION: We ask that Congress take no action on changes or amendments to the Hawaiian Homes Commission Act and that land exchanges, dating back to 1980, not be acted upon at this time.

Part II. Vol II of the Native Hawaiian Study Commission report makes recommendations that are detrimental to the beneficiaries of the Hawaiian Homes Commission Act. We oppose the recommendation to sell the Hawaiian Home Lands in fee simple; there are still thousands of applicants who have not yet gained their rightful share of these lands. We also strongly oppose the recommendation to determine a single definition of the Native Hawaiian. It is not a matter of blood quantum, but a matter of land. Land that was given to the Hawaiians by Congress in 1920 in recognition of their right to these lands. The right of the common people. Some oppose it because they feel Congress had no right to impose a blood quantum requirement. We thank Congress for it. It became the most powerful land document in the history of Hawaii. Although the lands given were considered opala (rubbish) and the funding inadequate, time has made these lands today, very valuable and desirable by others. We want what is rightfully ours. No more and no less. The lessees have proven the worthiness of the homestead awards.

RECOMMENDATION: We ask that Congress not take any action on these two recommendations. We ask that the definition of the Native Hawaiian defined in the Hawaiian Homes Commission Act remain in tact. We are weary of others making decisions for us for it has not been to our benefit. We believe that it is time that the administrators of the Act and the 5f trust concentrate on fulfilling the requirements of these trusts rather than looking for ways that does not benefit the people.

In closing, I would like to point out that we prepared our testimony without the expertise and resources being provided in this arena today. But we are those who will be affected and we want you to know how we feel. We pray that God will grant you the humility to use wisdom in deciding the fate of of the beneficiaries of the Hawaiian Homes Commission Act.

Mahalo.

Winona A. Freitas
WINONA A. FREITAS
Papakolea Community Association
Oahu, Hawaii
April 16, 1984

Senator MATSUNAGA. Our next witness is Analika Victor, of the H'oala Kanawai, Inc.

STATEMENT OF G. ANALIKA NAHULU VICTOR

Ms. VICTOR. Mr. Matsunaga and Mr. Akaka, aloha ka kou.

My name is G. Analika Nahulu Victor. I am a Public Law 96-565, title I native Hawaiian, a life-long resident of the Nanakuli Ahapua'a, and a trustee of Ho'Ala Kanawai Inc. Ho'Ala Kanawai is a statewide Public Law 96-565, title I, Native Hawaiian organization whose purpose is the betterment of conditions of native Hawaiians as defiend by the Hawaiian Homes Commission Act, 1920, as amended.

I am here today as one of many native Hawaiian organizations in support of a native Hawaiian declaration and claims, and request your attention.

We, the native Hawaiians—that some public law native Hawaiians—are the traditional, rightful, legal occupants and users of the land, water, sea, mineral and all other resources as farmers, fishermen, hunters, manufacturers, miners, tradesmen, professionals and residents who have nurtured and permeated the Hawaiian Archipelago.

We, the native Hawaiians, have inhabited and occupied this archipelago and exercised our traditional rights since time immemorial to sustain and maintain our culture and primordial interests under all of the governments exercising jurisdiction over the Hawaiian Archipelago.

We hereby present to the President and the Congress of the United States of America, and to all whom this may concern, this declaration and claims to the Hawaiian Archipelago, and declare our plenary and equal rights to protect our fundamental rights and freedom, and our Hawaii Admission Act, section 4—the Hawaiian Homes Commission Act, 1920, and section 5(f) land trusts.

Thank you very much.

Do you have any questions?

Senator MATSUNAGA. I wish we had time for questions.

Ms. VICTOR. I'm still in my 5 minutes.

Senator MATSUNAGA. We'd appreciate it if everybody else could follow your example. We'll be out of here at a decent hour.

Thank you, miss, especially for keeping within the time limit.

Our next witness is Kamuela Price of Maui Loa Hou Hawaii. Kamuela.

STATEMENT OF KAMUELA PRICE, MEMBER, ADVISORY COUNCIL, HOU

Mr. PRICE. The Honorable Senator Sparky Matsunaga, Congressman Danny Akaka, members of the Committee on Energy and Natural Resources.

My name is Kamuela Price. I'm on the advisory council to the Hou, a self-determined, federally recognized ohana—private body. The Hou basically represents the interests of native Hawaiians defined in the State Admission Act—in essence, those of 50 percent aboriginal blood or more.

Our constituuency consists mainly of the poor, needy and culturally deprived among the native Hawaiians. The aloha-trusting nature of our poeple leads them to believe that the U.S. Government will live up to the Federal mandate in the State Admission Act, and protect the birthrights of the islands' aboriginal residents. Before exploring these matters further, the Hou would like to state for the record that the chairman of the committee, the Honorable Senator, Sparky Matsunaga, who first introduced the idea of the native claims bill in Congress way back in 1974; has always come way out of his way to extend a hand of friendship to the Hou and to accommodate the concerns of the relatively tiny minority of people we represent.

Like everyone gathered here today, the whole desire to advocate what is best of the native Hawaiians, their descendants and present day ali'i leadership. Our greatest concern is that nothing recommended here today will lessen the rights that the U.S. Government in her goodness and wisdom extended to our people as a condition of statehood and the Hawaiian homestead provision to the Hawaii Admissions Act—and in the native American legislation, the Native American Freedom of Religion Act and the Hawaiian Homestead Federal-State Task Force recommendations.

It is the opinion of the Hou and legal counsel to stipulations in the statehood Admission Act being a Federal mandate in condition of statehood make it the strongest possible treaty that could exist between the United States and the indigenous people of Hawaii. Were the Congress to modify or change the promises contained in the statehood compact, the sincerity of all such future and past arrangements would become suspect.

The Hou would like to detail a plan that would give reparations or restitution to native Hawaiians, their descendants, and living ali'i leadership—without changing one iota of the Hawaiian homestead and 5(f) provisions of the statehood Admission Act—or for that matter, there would not be a red cent, or there would not be the cost of a red cent to the taxpayers of the United States or the State of Hawaii.

Time being a constraint, we will submit to this committee that part of our testimony in writing. In the meanwhile, we would like to thank Senator Matsunaga, this committee, Kina'u Kamali'i, the Hou Hu Ohana, and everyone else for the tremendous effort they are putting forth on behalf of the native Hawaiians, their descendants and living ali'i leadership.

Mahalo.

Here's a calendar. Time being what it is, we hope you get the idea behind it—for you and all the members of your committee.

Senator Matsunaga. Thank you.

Our next witness is Maui Loa.

STATEMENT OF MAUI LOA, CHIEF OF THE HOU

Mr. Loa. Mr. Chairman, the Honorable Sparky Matsunaga, the Honorable Dan Akaka, members of the committee, friends of the native Hawaiian people.

My name is Maui Loa. I am chief of the Hou, a self-determined, federally-recognized native Hawaiian tribal ohana; and for the record, "Hou" translated in Hawaiian is "rebirth" or the tribe came back.

The Hou feel that it is most important that this committee know the ancestral history of the Hou, and the rationable behind our thinking on native claims.

Time being a constraint, we ask your permission to submit in writing the balance of our documented testimony.

In the interim, the Hou would like to thank Senator Sparky Matsunaga, Danny Akaka, and the Native Hawaiians Claims Commission, for the time they're expending in exploring ways and means to assist our people in their struggle for cultural survival.

The Hou would also like to thank our ohana, our kahuna pule, my Makuahine, Ma Ma Loa and all other Hawaiian organizational groups and individuals who have unselfishly contributed their tireless energy to studying the social and economic problems caused by the westernization of our people.

Mahalo Nui Loa.

Senator MATSUNAGA. Maui Loa, you've grown up since I took you to the White House to have one of your paintings presented to the President. Congratulations—I see that you're the chief.

Our next witness is Calvin Ontai. Calvin, we'll be happy to hear from you.

STATEMENT OF CALVIN W. ONTAI

Mr. ONTAI. My name is Calvin Ontai. I'm for reparations. My subject is what types of reparations I'm sure we're going to get to. I'm not against giving back land and cash to Hawaiians. Whatever is to be given is to be given wisely so it will have lasting effects. Education is most important—not just education, but proper education that will fit the needs of the Hawaiians, especially the youths and young adults perhaps up to 40 years of age.

Education will last one's lifetime and passed on in one way or another to one's friends, community, and especially to one's offspring. We all have problems, but we solve them because of proper education—at least most of us.

Hawaiians have more problems and have difficulty solving them because of lack of proper education in most cases—at the school, at home, and in their communities. With proper education, Hawaiians could solve their problems such as the job problem, economic problems, social, health, welfare, and community problems. Education also adds a very, very important ingredient to one's life, and it's very necessary. I refer to pride. Pride, a feeling of being equal, a feeling of being part of society and in the mainstream, thereby wanting to do better. Most adult Hawaiians are only three or four generations away from the Stone Age, yet are living today in the most highly competitive modern, western, Oriental society, where education is paramount. I myself am only two generations from the Stone Age. I remember my Tutu Wahine telling me how she and her community pounded their poi with stone, pounded and ate with fingers. Most Hawaiians are in dire need of better education to catch up with the Oriental and Caucasian populations who they must compete with for jobs, housing, and all the good things of life.

In place of cash, the Hawaiians in their younger groups, even perhaps up to 35 years—perhaps it is best to set up a program so they can and are encouraged it use it and secure a good education in the field of their choice. Some will choose college preparatory and some will choose blue-collar preparation. Either choice is acceptable, as long as it's a good one.

An important part of this program, of course, is an everyday problem, such as how to be a good citizen; being a good coworker in one's jobs; being a good family and community member; being a good parent. How to live in one's budget; the importance of saving money for a rainy day. Good health and eating habits, and many other everyday problem-solving. These programs wouldn't have to be run by the Federal and State Governments. Congress merely sets the guidelines—guidelines that can be changed to meet the changing times.

It is to be run by Hawaiians—perhaps at this stage, OHA—Office of Hawaiian Affairs may do the job. Our public schools offer a fair college preparatory course, but almost nothing in the blue-collar field. However, in both cases, the system and school environment have not encouraged Hawaiian students to take advantage of it. In fact, it is a failure to the Hawaiians. Much more money is needed to improve and/or change the public school system and programs. Perhaps this program—a complete new school for Hawaiian youth and young adults to meet the special needs of the Hawaiians. Kindergarten to the 12th grade would be ideal, but at least from the 8th to the 12th grade would be needed. One of three years of boarding school for every Hawaiian youth would go a long way to teaching good eating, health habits, and everyday living habits which are not generally taught at home and in day school.

Representative Danny Akaka sitting there in the corner is the product of a boarding school. They took all his bad habits away; left him only good ones. I think they did. No, I know they did. Two or three such schools to be located in Oahu. One or two on Maui. One or two on Kauai. Two or three on the Big Island are minimum standards—more if possible. Perhaps a joint venture with Kamehameha School would be best—I'm not sure of that—to be explored. I'm a graduate of Kamehameha School. I personally don't know of any graduate from Kamehameha School on welfare or in prison. If they are, it is rather rare.

In conclusion, education programs is a big part of reparations. They are the least expensive, not difficult to implement; three, will have the least resistance by Congress; four, will make Hawaii in the United States a better community with much less social, health, and economic problems; five, will have the best and most everlasting effect on the recipients, the Hawaiian people.

Education is the necessary tools for solving one's problems. Without proper education, the battle of survival today is lost.

Thank you.

[The prepared statement of Mr. Ontai follows:]

April 16, 1984

My name is Calvin W. Ontai, 91-951 Ololani Street, Ewa Beach. I am part Hawaiian. I am for Reparations. My collegues have told you all the legal and moral reasons.

My subject is "WHAT TYPE OF REPARATIONS". I am not against giving back lands and cash. Whatever is to be given is to be given wisely so it will have lasting effect. EDUCATION IS MOST IMPORTANT..not just EDUCATION but PROPER EDUCATION that will fit the needs of the Hawaiians especially the youths and young adults perhaps up to 40 years.

Cash &/or land will likely be spent in a short time and give temparory benefits. EDUCATIONwill last one's life time and passed on in one way or another to one's friends, community, and especially to one's off-springs.

We all have problems but we solve them because of proper education. Hawaiians have more problems and have difficulty solving them because lack of proper education in schools, at home and in the community. With proper education Hawaiiams can solve their problems such as jobs, economics, social, health, family and community.

Proper EDUCATION also adds a very, very important ingredient to one life that is very necessary. I refer to PRIDE..a feeling of being equal, a feeling of being part of society and in the mainstream thereby wanting to do better.

Most adult Hawaiians are only three or four generations away from the stone age, yet are living today in the mostly highly competitive modern western oriental society where education is paramount. I myself am only two generations from the stone age..I remember my Tutu (grandmother) telling me how she and her community pounded their poi with a stone pounder& ate with fingers.

Most Hawaiians are in dire need better education to catch up with the oriental and caucasian population who they must compete with for jobs, housing, and all the good things of life.

Unless government steps in to assist in a big way, Hawaiians will take about two more generations to bridge the educations gap. During this long period not only Hawaiians suffer but other residents of Hawaii, the State government and the Federal government in the form of more social problems and money spent to run them.

In place of cash for Hawaiians below 35 years, set up a program so they can and are encouraged to use it and secure a good education in the field or their choice. Some will choose college preparatory and some will choose blue collar preparation. Either choice is acceptable..as long as it is good. An important part of this program are courses on every-day problems such as how to be a good citizen, being a good co-worker at ones job, being a good family and community member, being a good parent, how to live within one's budget, the importance of saving money for a rainy day, good health and eating habits, and many other every day problem solving.

These programs are not to be run by the Federal or State government. Congrss merely set the guide lines..guidelines that can be changed to meet the times. It is to be run by Hawaiians. Perhaps OHA (Office of Hawaiian Affairs) may do.

Our public schools offer a fair college preparatory course but almost nothing in the blue collar field. However, in both cases, the system and school enviroment does not encourage Hawaiian youths to take advantage of it. In fact it is a failure to the Hawaiians. Much more money is needed to either improve &/or change the public schools system and programs.

Perhaps the best program are complete new schools for Hawaiian youths and young adults to meet the special needs of Hawaiian. Kindergarten to the 12th grade would be ideal but at least from the 8th through 12th grade is needed. One or two years of boarding school for every Hawaiian youth will go a long way in teaching good eating, health, study, and everyday living habits which are not ~~generally~~ taught at homes and in day schools.

or 1 Two, three or four such schools to be located on Oahu, one or 1 on Maui, one or 1 on Kauai, and two or 3 on the Big Island are minimum...more if possible.

Perhaps a joint venture with Kamehameha Schools may be best. I am a graduate of Kamehameha Schools. I personally don't know of any graduate on welfare or in prison. If they are, it is rather rare.

Education programs, as a big part of REPARATIONS, ARE:

1. The least expensive
2. Not difficult to implement
3. Will have the least resistance by Congress.
4. Will make Hawaii and the United States a better community with much less social, health and economic problems.
5. Will have the best and most everlasting affect on the recipients, the Hawaiian people.

Aloha
Calvin W. Ontai
Calvin W. Ontai
91951 Ololani Street
Ewa Beach, Hi 96706

Senator **Matsunaga**. Our next witness is Jochanan Kaui Amsterdam. Are you here, Ms. Amsterdam? No?

We'll go to our next witness, Kehaulani Nunuha of Waianae.

Mr. **Nunuha**. My slipper just went broke, so must be I got to go native now.

Aloha, Senator Sparky Matsunaga and Congressman Akaka, and members of the committee.

Senator **Matsunaga**. Aloha.

STATEMENT OF KEHAULANI NUNUHA

Mr. **Nunuha**. Ke Hawai'i Ou. I am Hawai'i. My name is Kehaulani Nunuha. I want to share my mama'o, thoughts, with you, Senator Matsunaga, so that you maopopo [phonetic] understand, why I must leave you a written testimony for me, myself and my people—who are native Hawaiians, 50 percent or more.

Any issues concerning aboriginal or part Hawaiians has something to do with me. I am tired of all the people who represent us to not do what has to be done for me and my people. "What I see, let the hands do"—it is said to a person who sits when there is much work to be done, but does not offer to help. This proverb is an ancient one for me and my people.

Me and my people, the native Hawaiians, are still alive. We are still here. Only the administration has changed. And I know, deep in my heart, that my people have been mistreated enough. It is time to hold firm on our roots—read and study all Hawaiian things. Don't overlook this, for this issue is not to be fooled around with. It is not a game. I am insulted to have learned that my rights have been violated by the very same people who set the law themselves. History has been the missing puzzle for us and now we must set our education to the beginning—to the history, to where it all began.

Also, our religious rights have been violated. Kahoolawe is being bombed—like it had no value today, to top it off. We invite the Navy; we invite everybody else to come and bomb away our sacred aina. That's enough damage come already to us aboriginal Hawaiians.

I could go on, but I'll save it for another time, because this is to let you know that you must read and study all things concerning aboriginal Hawaiians. "Turn the palms of the hands downward in work, and not upward in idleness. Do not procrastinate. Prepare for the future now."

Mahalo.

Senator **Matsunaga**. To that, let me respond, Nake Akua Oe Ehou Mahikai Mae.

Our next witness is Velma Kekipi.

STATEMENT OF VELMA PAPAHILEIALOHA KEKIPI

Ms. **Kekipi**. Senator Matsunaga, Representative Akaka, and to all of you, Aloha Ahiahi Ia Oukou.

Mahalo Nui Loa for participating in these proceedings. Velma Papahileialoha Kekipi Ka'u Iona. I am a native Hawaiian of 50 percent sansei, third generation Japanese, and 50 percent aboriginal Hawaiian ancestry. I am happy I am an American citizen, especially because I am a female. And I am proud that I am Hawaiian.

I would like to share some of my observations and mana'o regarding the political climate that this Native Hawaiians Study Commission endures as political and economic and national pride here and elsewhere that triggered off the 1893 overthrow of the monarchy.

First of all, I would like to joggle your memory banks. The Native Hawaiians Study Commission goes back to President Carter. On the very last day of his term, he appointed nine members to this Commission. His selections were all Democrats. When I heard of his appointments, I said to myself, "Oh no, here we go again. This will be handled like a political football."

And sure enough, when President Reagan took office, one of the first things he did in office was to cancel the Commission. Then later, he reestablished the Commission, and announced his selections, who were all Republicans.

This is a classic example of American politics. The issue is just being used to score points, and votes, and to save face. How could the Native Hawaiians Study Commission come out with any honest and legitimate recommendations which would have advocated any further claims to the U.S. Treasury when the deficit budget is such a crtical situation?

Now, for the political, economic and national pride here and elsewhere that triggered off the 1893 overthrow of the monarchy. I recommend that you refer to the Blount Report done during those times. Col. James Blount was commissioned by President Grover Cleveland to investigate the allegations of our ali'i. The Blount Report confirms the role of the United States in the 1893 overthrow of the monarchy. On December 18, 1893, President Grover Cleveland went before a joint session of Congress and admitted that a grave injustice was caused to a sister nation. It is all there in the annals of the Congressional Record.

The question is not if the United States had a role in the overthrow. The question is how to work things out amicably.

The process of trying to undo something that was done was very difficult and embarrassing for the United States at that time. When our ali'i was asked about the handling of the American leaders who implemented the overthrow, our ali'i answered that they would be tried for treason. This is something that the United States could not allow publicly or officially.

The deliberations took years; our ali'i agreed to drop the treason charges and only ban the leaders of the overthrow from the Islands and never to return again. But the leaders of the overthrow, who took over the use of 2.1 million acres of land, formed the Republic of Hawaii, and refused to restore the monarchy, or to return anything that they took over the use of.

I could go into more details, but because of the time restraints, I would like to close quoting our ali'i, King David Kalakaua, brother of the ali'i, Queen Liliuokalani, who was overthrown. This is an excerpt of his farewell speech—he was the first head of any government to go around the world. I think it's very appropriate for these times.

It is quoted from "Hawaiian Kingdom" by Kuykendall, third volume, page 228:

> Around this table are gathered people of many nations. In common with my predecessors, I desire the best welfare of all who gather under our flag in my dominions. And I believe that you who come from other lands, bringing with you the wealth, enterprise and intelligence of those lands, sympathize with me in my desire to protect my Native Hawaiian people and strengthen my nation.
>
> To do this we must work in harmony under our constitution and laws, and recognize cheerfully the fact that Hawaii, as one of the family of nations, must be governed in accordance with the ideas which control constitutional governments.
>
> We have many difficult questions to settle arising out of our peculiar situation. They demand the best statesmanship and patient investigation. I am in hopes, while absent, to gather some ideas which shall aid in their solution.
>
> If there have been mistakes in the past, let us profit by the lessons of experience, and with honesty of purpose let us press on to a future which I trust may be bright with prosperity and hopefulness.

King David Kalakaua, January 14th, 1881. Iolani Palace. Nine p.m.

Mahalo Nui Loa.

STATEMENT OF RICHARD KINNEY

Mr. KINNEY. I'm the son of the old Benny Nakador.

Aloha Enou Kupuna, Inao Opio E Sparky Matsunaga, Representative Akaka, Aloha Nui Kakou E Hawai'i.

One little correction on Hawaiian culture—I learned, and I was taught—we never read it in the traditional Hawaiian custom. If you agreed with the Aloha that I expressed to you, the proper response is, Aloha Nou. To say just, Aloha, is saying, Hi. Aloha Nou. We must, especially the Hawaiian people, not only practice our culture, but we must live it to perpetuate it. Mahalo Nui.

I come here today not to trade, not to bargain or sell vested land birthrights of the native Hawaiian people. I speak as a founding director of the Hawaiian Political Action Council of Hawaii. HPACH supports 90 percent of volume II of the report. HPACH looks upon volume I as a piece of document that is filled with wahakukai that insults the dignity of the Hawaiian people. And to the kupuna in my audience here, I beg understanding why I use this word—wahakukai. Because when it is insulting to us, we must stand up and throw the insult right back to the insulter.

This insult of volume I not only insults the dignity of the Hawaiian people, but it insults me as an American citizen, one who loves this country dearly, one who supports this country, one who was willing to die in fighting for this country, and one who still stands by this country, as an American citizen. When it came out that the six Commissioners would be from the mainland and only three from Hawaii, I said, "OK, we'll try. We'll try to persuade the six and see if they can feel—feel, accept, our Aloha for justice."

Well, it's history told. I'm very sad to say this is the same facts that we're going to have to live with. And this is why today I speak as the founding director of the Hawaiian Political Action Council of Hawaii. As an individual Hawaiian, native Hawaiian descendent, I declare myself as an Hawaiian sovereign unto God, not the State legislature nor its Governor or the Congress or the President, but under God.

As far as the blood quantum is concerned, I can't live with any blood quantum. I don't care what the law reads—whether it's 100, whether it's 50, or whether it's one thirty-second, or whether it goes out the window. My birthright, I am a native Hawaiian descendant.

I am appalled today at the State's presentation. How dare the Governor send the Lieutenant Governor who is of Hawaiian ancestry to come here and speak of the State's stand. A lot of the insults happens to the Hawaiians happens right in this building.

I do not have a written report, which I'll turn in, because I've been too busy attending many of these hearings around here. I came across the bill, a resolution that puts the Bishop Estate lands up for sale—something that Queen Emma's estate will that went through 1950 termination—and I tell you, the Representatives of Congress, if and when the U.S. Supreme Court ever states that the Hawaii Land Reform Act is constitutional, I as a sovereign Hawaiian will burn the American flag on the steps of the Iolani Palace and spend the rest of my life overthrowing this Mickey Mouse government that continues to keep the Hawaiians, quote, in the bucket.

HPACH supports a moratorium to place immediately on all native Hawaiian lands until this study commission is over. There is too much native Hawaiian land that goes up for sale every day. And once these lands go up for sale and sold as fee simple, they are almost out of the Hawaiians' control. Many Hawaiians are fighting to retain their birthright to these native Hawaiian lands that go up for sale every day.

I'm sovereignty as the sovereign director, Hawaiian Political Action Council of Hawaii, I speak only of myself as being sovereign. I cannot dictate to any one of my family, friends, what is their sovereignty—it is up to them to declare, stand up, or whatever. As a sovereign Hawaiian next year, one of the things I will seek to the present legislature is that the flag that once flew over the Nation of Hawaii, that dearly beloved sovereign Nation, and today flies over the State, will be flown side by side of the national flag. I consider it will be an insult to our ancestors to have our State's flag flying below or under the national flag in this State.

I will also seek that the public school named after President Cleveland be built on Hawaiian lands to honor that great President that stood by the will of the Queen and the Hawaiian people. In fact, in my research, McKinley School should have been named Cleveland.

I also as a sovereign Hawaiian, I look up as the national anthem of Hawai'i, "Hawaii Pono Ae" as my constitution. And yet, if I must, I will defend that right.

I will also look upon as the motto, Ua Mau Ke Ea O Ka Aina Ika Pono, as the golden rule—that sadly, the State of Hawaii, the territory, the republic has misinterpreted all these years, but my culture teaches me that Ua Mau Ke Ea O Ka Aina Ika Pono means, "The sovereignty of the land is perpetuated in righteousness. And I refuse to celebrate this State celebration that misuses the State's motto and also the motto of the monarchy of Hawai'i.

I thank you very much for spending time to come here and listen to us. And to you, Senator Matsunaga, and the rest of you—Akaka, Heftel, Inouye—I am sure that the blessing, the prayers of the Hawaiian people reach out to you, because believe me, we need you also to look into conditions concerning the senior citizens, the education of the young people, the medical needs of the veterans—it is time that our elected leaders pay a little bit more attention to the needs of we, the people of these United States.

Mahalo Nui.

Senator MATSUNAGA. Thank you, thank you very much, Richard. Our next witness is Minewa Kaawa.

STATEMENT OF MINEWA PERRY KAAWA, PRESIDENT, MAUNALOHA VALLEY COMMUNITY ASSOCIATION

Ms. KAAWA. Senator Matsunaga, Congressman Akaka, ladies and gentlemen, aloha.

Senator MATSUNAGA. Aloha.

Ms. KAAWA. My name is Minewa Perry Kaawa, and I'm president of the Maunaloha Valley Community Association.

Native Hawaiian title I, Public Law 96-565—culture, needs and concerns.

We are a group of native Hawaiians living in a valley called Maunaloha at the foot of Round Top in Makiki, Honolulu, Island of Oahu.

Due to historical circumstances and lack of interest on the part of the government and the State of Hawaii, we have been overlooked, neglected and ignored for the past 100 and more years.

These lands of Maunaloha were awarded through the Great Mahele under King Kamehameha III in 1848 to High Chief Keawehano. He gathered his people, his family, to tend, cultivate, and preserve the land for native Hawaiians. This the people did to hold and enrich their heritage for all time.

Through the years, this little community grew, yet kept its lifestyle and abided by the laws that were fast becoming a threat to them. They lived off the land and had their own little church and store as well as jobs outside of the valley.

Unknown to these little families, this area was declared a forest reserve in 1910, but they were left alone in their little community. Prior to this year and about the same time, the government has started selling lands and exchanges deep in the valley and around the ridges of this community to affluent people.

In 1919 the residents were issued permits and were told by then-Commissioner T.W. Bailey, and I quote:

"You will have no difficulty in having this permit renewed from time to time, if necessary."

Still, the people were left alone, and still the residents petitioned for the next 9 years their right to claim ownership of these lands. But the people were denied any voice and left alone again.

Government records prove that these families were and are still living in this same valley. They were denied their right to repair and rebuild, even though they had permits. In spite of all this, they still kept their life style. Even after 1959, when Hawaii became a State, things did not change for these valley people, now in the sixth and seventh generation since Chief Keawehano. Still, the people were left alone.

These families, without realizing it, were being shuffled back and forth between the Government and other State agencies. Nobody wanted to be responsible for their well-being. In 1947, the families were told they must now start paying $5 per month to take care of taxes. And again they were ignored, until 1977 when the first serious challenge to their properties occurred, when the State of Hawaii wanted to evict the families to create a park. For 6 years, these people fought back with documents and house bills and resolutions through State government agencies. Eventually the State of Hawaii and these families agreed to a 65-year lease.

We do not totally agree with this lease, because we feel that this is our land, and normally and rightfully belongs to us—land that we have lived on for more than a hundred years. Although many laws have been passed to help aboriginal native Hawaiians, none of them have ever applied to us. We have always fallen between the cracks.

We are very unique in this situation because we are all one family. This family consists of 165 people living in a community called Maunaloha Valley.

We have preserved and worked and lived in harmony on this beautiful land for generations. Because of restrictions from both the city and county of Honolulu and the State of Hawaii, we have been unable to get any type of permit to repair and rebuild our homes, some of which are well over 50 years old.

As native Hawaiians, we want to preserve our culture and our life style and certainly do not wish to burden the State of Hawaii. Our young men fought in the Second World War. Our woman worked in defense plants. And our children attended the public schools. We are taxpayers and honest, hard-working people. Therefore, we disagree on volume I and II of the Native Hawaiians Study Commission report.

In closing, we would like to add this line from our State motto: Ua Mau Ke Ea O Ka Aina Ika Pono. The life of the land is preserved in righteousness.

Thank you very much.

Senator MATSUNAGA. Our next witness is Solomon Naone. Solomon?

STATEMENT OF SOLOMON NAONE

Mr. NAONE. Thank you, Senator Matsunaga and Congressman Akaka. I have three parts of my presentation today.

First one is reparations. Reparations is not a question of emotions. Wrongdoing by the United States must be proven legally, according to the law, before reparations can be considered. Volume I of the Native Hawaiians Study Commission report clearly explains why it has no legal proof that the American Government was guilty of anything specific in the overthrow of 1893. One hundred marines with guns, without orders from the President or Congress, is not an official invasion by the American Government. Since it was not official, the United States will not take the responsibility of guilt for what occurred. It is evidently the law.

Also to the actions of the Americans who participated in the overthrow—no lands were taken at the time, in 1893. The Hawaiians' lands had already been lost to Westerners and they had been taken legally, with the approval of our Hawaiian monarchy earlier. The U.S. Government did not get any land from Hawaii until 1898 when Hawaii agreed to annexation and became territory. So literally the argument about the United States being guilty of taking our lands in the overthrow of 1893 is totally waste and a losing battle.

On the other hand, what we need to prove instead is that the American Government was guilty of actions earlier beginning in the 1820's. Major damage was suffered by the Hawaiian monarchy and people between the 1820's and the 1850's. In only 30 years, our law, language, customs, and our rulers were completely westernized. It is true that Christian missionaries took the lead role in these actions. But it is also important to realize that there were authorized American officials responsible to oversee what may be called the progress of the natives. Written documents literally verify America's awareness and involvement in the whitewash process—the Blount Senate Report—from the official agents in Hawaii to the White House throughout this period of time.

The findings and recommendations of the Blount Report have been disputed, but the written documents in the report cannot be questioned. What is wrong with both volumes I and II of this report? It is that they do not focus or give enough attention to the diplomatic relations of the United States and Hawaii between 1820 and 1975. Information on this period can be found in volume I, but it's sadly listed in relation to understanding the native Hawaiian culture instead of including in the legal argument of the U.S. role in Hawaii. This is a major flaw to this comprehensive study report that needs to be corrected. We humbly ask the Senate committee to review and investigate the American Government's role in Hawaii between 1820 and 1875. Is there legal evidence of the American Government being guilty of undermining our sovereign nation? If so, then we would have a legitimate legal issue for Congress to address the subject of reparations due to the Hawaiian people.

Here are some questions that need to be answered: What role did the U.S. Minister in Hawaii play? How informed was the U.S. Government about Hawaiian affairs during this time? What were the American interests in Hawaii regarding national defense and trade? What was the American role and advantages to receiving and requesting reports on how well the native Hawaiian people were accepting Western ways? Why was it that only the possible heirs to the Hawaiian throne, the children of the Hawaiian royalty, were the only youths formally educated in Western ways by the Christian missionaries? Did this serve the political benefit of the American Government to have the children of Hawaiian royalty trained in Western customs? Why was our friendship treaty written by the United States for our Hawaiian king to sign in 1846, but not signed by the United States until 1875? What about the delay—was it politically beneficial to the American Government? Was the Hawaiian monarchy given the false impression of protection by the larger nation of America? How was the Hawaiian Legislature designed? Did it comply officially to the American congressional format? Did American authorities play a role in its creation and establishment? Did this weakening and degrading of a sovereign nation benefit the American Government? Were officials' reports maybe indicating how soon Hawaii would be ready to be taken over by the United States, So was all of this coincidental or was it designed to assist the annexation of Hawaii to the United States? How desirable was Pearl Harbor—then called Pearl River—to the American Government? Also, how valuable was the potential sugar industry to the American economy?

Part two—Federal programs to address the native Hawaiian needs.

It is important for the public here to realize current Federal programs for native American Indians are already suffering from tremendous cutbacks. It would be foolish and offensive to our brothers, the American Indians, to try to get a piece of their dwindling piece of the pie in native American funds.

We strongly support the recommendations listed on pages 28 through 32 in volume I of the report. Programs from all government levels should immediately be implemented to assist in the areas of education, employment, and nutrition of the Hawaiian people.

We also agree a clearing house for such information be created to perform a facilitating role in quickly meeting these needs.

It would be beneficial if Congress would urge the various Federal departments listed on pages 31 and 32 of volume I to consider the unique needs of native Hawaiians in regards to their programs.

Part three—the return of ceded lands.

This is a separate major issue that needs congressional attention immediately. When Hawaii became a terrotory of the United States, the remaining former Hawaiian crown lands were given in trust to the American Government. When Hawaii became a State in 1959, the American Government agreed to return almost 144,000 acres of these lands, but has failed to do so.

We urge this committee, Senate committee, to review this matter and assist in returning these lands as soons as possible. The delay has been offensive and suspect of being illegal.

With deep respect and concern, from Tony Auld-Naone, former editor/publisher, the Hawaiian News, and Solomon K. Naone, community development specialist, Progressive Neighborhoods Programs, from the district of Waianae.

[The prepared statement of Mr. Naone follows:]

April 16, 1984

PUBLIC TESTIMONY PRESENTED TO:

U. S. Senate Committee on Energy and Natural Resources
Public Hearing Re: Native Hawaiian Study Commission Report.
Senator Spark M. Matsunaga, Chairman
Hawaii State Capitol
Honolulu, Hawaii 96813

PART I. REPARATIONS

Reparations is not a question of emotions. Wrong-doing by the United States must be proven legally according to the law before reparations can even be considered.

Volume one of the Native Hawaiian Study Commission Report clearly explains why we have no legal proof that the American Government was guilty of anything specific in the overthrow of 1893.

100 Marines with guns, without orders from the President or Congress, is not an offical invasion by the American Government. Since it was not official, the American Government will not take responsibility or guilt for what occurred. This is evidently the law.

Also, through the actions of the Americans who participated in the overthrow, no lands were taken at that time in 1893.

The Hawaiian lands had already been lost to westerners, and had been "taken" legally with approval of our Hawaiian monarchy earlier. The United States Government did not get any lands from Hawaii until 1898 when Hawaii agreed to annexation and became a territory.

So legally the arguement about the U. S. being guilty of "taking our lands" during the overthrow of 1893 is totally weak and an all out losing battle.

On the other hand, what we need to prove instead is that the American Government was guilty of actions taken earlier, beginning in the 1820's.

Major damages were suffered by the Hawaiian Monarchy and her people between the 1820's and the 1850's.

In only thirty years our laws, language, customs, and our rulers were completely westernized.

It is true that christian missionaries took the lead role in these actions, but it is important to realize there were authorized american officials responsible to oversee what may be called the "progress of the natives".

Written documents legally verify America's awareness and involvement in this "white wash process". The Blount Senate Report includes memoirs from the official agents in Hawaii to the White House throughout this period of time.

The findings and recommendations of the Blount Report have been disputed, but the written documents within the report cannot be questioned.

What is wrong with both volumes I and II of this report is that they did not focus or give enough attention to the diplomatic relations of the United States in Hawaii between 1820 and 1875.

Information on this period can be found in volume I, but is sadly listed in relation to understanding the native hawaiian culture instead of being included in the legal arguement over the U. S. role in Hawaii. This is a major flaw in this comprehensive study report that needs to be corrected.

We humbly ask this Senate Committee to review and investigate the American Government's role in Hawaii between 1820 and 1875. Is their legal evidence of the American Government being guilty of "undermining a sovereign nation"?

If so, then would we have a legitimate legal issue for congress to address the subject of repartions due to the Hawaiian people?

Here are sample questions that need to be answered:

1. What roles did the U. S. ministers in Hawaii play?
2. How informed was the American Government about Hawaiian affairs during that time?
3. What were the American interest in Hawaii regarding national defense and trade?
4. What was the American role and advantages to receiving (and requesting) reports on how well the native Hawaiian people were accepting Western ways?

5. Why was it that only the possilbe heirs to the Hawaiian throne (the children of the Hawaiian Royalty) were the only youth formally educated in western ways by the christian missionaries? Did this serve as a political benefit to the American Government to have our future Hawaiian Royalty trained in western customs?
6. Why was a "friendship treaty" written by the United States for our Hawaiian King to sign in 1826, but not signed by the United States until 1875? Was the delay politically beneficial to the American Government? Was the Hawaii monarchy given the false impression of protection by the larger nation of America? How was the Hawaiian legislature designed? Did it comply beneficially to the American Congressional format? Did American authorities play a role in its creation and establishment?
7. How did the Land Commission come into existence in 1850? Did American authorities play a role in its creation and establishment? Did it benefit the American government to have certain members be sent from America t sit on the original commission in Hawaii? Did the American government have knowledge that this is how title of the lands were "legally" being taken away from the native Hawaiian people? Did American officials know the Hawaiian people did not understand the western concept of "ownership of land." Did American officials know public notices, according to the law, were posted in English for people who did not speak or read English?
8. Did this weakening and division of a sovereign nation benefit the American government? Where official reports made indicating how soon Hawaii would be ready to be taken over by the Untied States?

So was all of this coincidental or was it designed to assist the annexation of Hawaii to the Untied States? How desirable was Pearl Harbor (then called Pearl River) to the American Government? Also how valuable was the potential sugar industry to the American economy?

(See attached reference material for related information. It was also submitted and exhibited in Volume I of the report.)

PART II. FEDERAL PROGRAMS TO ADDRESS NATIVE HAWAIIAN NEEDS.

It is important for th epublic here to realize current federal programs for native American Indians are already suffering from tremendous cutbacks. It would be foolish and offensive to our brothers, the American Indians, to try to get a piece of their dwindling "piece of the pie" in native American funds.

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We also agree a clearinghouse for such information be created to perform a facilitating role in quickly meeting these needs.

It would be beneficial if congress would urge the various federal departments listed on pages 31 and 32 of volume I to consider the unique needs of native Hawaiians in regards to their programs.

PART III. THE RETURN OF CEDED LANDS.

This is a seperate major issue that needs congressional attention immediately. When Hawaii became a territory of the United States, the remaining former Hawaiian Crown Lands were given "in trust" to the American Government. When Hawaii became a state in 1959, the American Government agreed to return almost 144,000 acres of these lands, but have failed to do so.

We urge this Senate Committee to review this matter and assist in returning these lands as soon as possible. The delay has bee offensive and suspect of being illegal.

With Deep Respect and Concern,

Solomon K. Naone

Toni Auld Naone

Tony Auld Naone
Former Editor-Publisher
The Hawaiian News

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Senator MATSUNAGA. Thank you very much.

Our next witness is H.K. Bruss Keppeler. Is Mr. Keppeler here? He's not?

Our next witness is Louisa Rice. Louisa, are you here?

Well, so nice to see you, Louisa. Louisa, some of you may recall, headed the first Aloha group that went to Washington, DC, and the group that urged me to introduce the first bill providing for direct reparations to the native Hawaiians. Welcome, Louisa.

STATEMENT OF LOUISA KANOEOKALANI MAKAIWI RICE

Ms. RICE. Thank you.

Aloha, Sparky Matsunaga and Congressman Akaka.

I came from Alaska this morning specifically to speak at this hearing. I felt it very important that I put my presence here today, because in March of last year I was at a student—I was attending as a student at the University of North Dakota and I had established an Aloha chapter there. And I received a letter from Senator Inouye's secretary stating that the Study Commission's report submitted to Congress is, and I quote:

"That the U.S. Government had not done any wrong, and that aloha's claim is invalid."

And so I was waiting for such a time as today and these hearings here in Hawaii to come and submit my thoughts and mana'o.

I am very deeply enthused to see the various thoughts that were represented here today. It doesn't matter that aloha has not been recognized, but it does matter that this whole scenario of Hawaiian native claims does not get out of hand. It is not an accident that I called it the Aloha Association, because I had no idea how these would turn out. But is was important to me since I made a commitment; that it would be a reminder to me and my children and to my Hawaiian people that when we approached Congress we are going to do it in a manner which the word "aloha" signifies. And so, in June 15, 1971, I made that final commitment, when the whole history of the overthrow was revealed to me, when the book, Hawaii's story, was printed. At first, as I said before, I was frightened—that this was something so big, I didn't want to handle it—until I had a dream 2 months later, and that was it. I had no more doubt but that I had to come forth and bring up the story of Queen Liliuokalani's loss of her Hawaiian land.

And until I came out, nobody knew, none of Hawaii knew that we had any rights at all. I didn't know until I read it. And then at this time, this confirmed how I felt, that we did have a very unique right. We have written rights and the rights under our Constitution of the United States.

And I must say here, again, that I'm proud to be an American, and I uphold the American flag, not in defiance of anyone. I do not despise any of you that have spoken your piece. I will not give up. I made this commitment. I made a commitment as a dedicated American of Hawaiian ancestry. My grandfather—my father—they upheld the flag of the United States with no thought whatsoever of any fight against our country. And so I felt a little humble that this whole thing was brought to me, and I want to state here and now that I do not recognize the Study Commission. I do not recognize OHA. OHA is duplicating wht the Aloha Association has done. And I have not given up. I have been away from Hawaii, yes. But I'm still in America. And Aloha was organized not as a Hawaii chapter alone. It was organized as a national chapter. I have sons, I have family in California. I'm not going to ignore them. And I'm sure all of you have. And this is the Hawaiian problem, no matter where we are—we are in America. And I organized Aloha as a national entity. I did not want to go alone against Congress. I needed a vialbe vehicle. And that's I organized the Aloha Association.

A year and a half later, we called for constitutional convention, and Aloha became a corporate body. In July 23, 1979, by involuntary dissolution by the Bureau of Register of Hawaii, the old Aloha Association was dissolved. I did not know about it until 1980 when I came to Hawaii. And like I am, I just tried to find out how the status about Aloha was. And there the director told me that he was waiting for the founder. I said, what for? He said, because Aloha was dissolved involuntarily and we need the founder to officially close it. So I said, well, here I am. And I dissolved it officially and in the next morning, I reinstated and reorganized Aloha again under a new name, but with the acronym, Aloha. And so instead of aboriginal lands of Hawaiian ancestry, it is now ancestral land of aboriginal—ancestral is used in the place of aboriginal and so we're still a viable, political entity. And I have not been idle all these years. I have been in touch with Sparky Matsunaga's office through his secretary to keep up, to give myself a feeling as to what is going on with the Hawaiian native claim bill. And time will not allow me, and I would like to give a full report of what has happened while I have been away. I'm now in Alaska. I have been very close to the Alaskan Natives and just a few months ago, they held a 3 month meeting of all the elected leaders and the Commission leaders discussing their settlement act and bill. And they were displeased. And from their mistakes, I am gleaning all their mistakes so it will not happen to our bill. And one of the main things that they objected to is they do not want corporation. There is some members, some stockholders that never received a cent? Why? It's been absorbed into the corporation to pay salaries. They pay for the maintaining of office and the poor middleman doesn't get a cent. And so we are not going their route either. Because of what I've seen in Alaska, and I've been learning; I am absorbing and watching how they are, the effect of their settlement act is affecting them, and I don't want the same thing happening to us. And so I've been in there; I have been active. But I needed to be sure that the Aloha chapter here in Hawaii was updated and still viable.

I have appointed a new set of board of directors—all the old ones are out. Arthur Peenie is no longer president. Until such time as there is enough money to call for an annual meeting, but in the meantime, I need representation of the 60,000 members of Aloha. And so, I have appointed a president of each chapter and they in turn will have to go back to their members and I needed to come here to tell you, my Hawaiian people, that Aloha is still in there. We have—I have not given up, and I've not given anyone the authority to speak for Aloha. And no one will need to interrupt what we have started. And you, Senator Matsunaga, I admire you. I came here to point an accusing finger at Senator Inouye. I'm glad he's not here. I do not have any feelings against the Japanese people, but only against an individual—because he is Japanese, it does not mean I'm against the Japanese. I have a family full of Japanese brothers-in-law, sisters-in-law—they're beautiful. And I like the Senator. But Senator Inouye—this is the 13th year since I have come in. There's been no action. And I try to be humble, but I get outrageous at times and I let go. But he is responsible for Aloha not being able to do anything. He interceded, interrupted with the Study Commission. And I can't see where the Study Commission has not even accepted the Blount Report. There was no need for this Study Commission. If you wanted the facts, right there in the Library of Congress, the Federal Archives—you've got it. And Commissioner Blount lived through that period of time. How else can you get a most—more viable record? So this study Commission is a big farce. It's a junket. And it was a means to stop Aloha from getting their bill into Congress. And it's past due—correct me if I'm wrong. When I was in Washington, the day that the Japanese-American bill was introduced in both Houses, not one—am I right, Senator? That bill was introduced in both Houses at one time, yet Aloha bill was never introduced in both Houses—only one House at a time. And that's why our bill was never, never passed. As a matter of fact, I feel there's been a conspiracy. A conspiracy against having our bill into Congress. And I feel we have not received the equal opportunity.

Senator MATSUNAGA. Louisa, I hate to cut you off, but you have exceeded your time; it's double now.

Ms. RICE. Thank you. But I've asked if I may speak in the Hawaii and the Kauai meetings, and she has given me approval. May I?

Senator MATSUNAGA. Yes.

Ms. RICE. Then I will continue for the record.

Senator MATSUNAGA. Fine.

Ms. RICE. I thank you.

[The prepared statement of Ms. Rice follows:]

INTRODUCTION

My name is Louisa Kanoeokalani Makaiwi Rice, an American citizen of 'pure Hawaiian' Ancestry, born at Maalaea Bay, Maui. At the age of (4) four, our family moved to Hoolehua, Molokai, to farm on Homestead lands. I've lived all my young life on the island of Molokai; and in the later years, moved to the big city of Honolulu, and subsequently, to Fisher, Minnesota; Grand Forks, North Dakota and presently, to Soldotna, Alaska; but the simple, uncomplicated life on Molokai remains as the happiest part of my life.

THE ALOHA ASSOCIATION AND ITS
HAWAIIAN NATIVES CLAIM BILL

The man totally responsible for helping me organize the ALOHA ASSOCIATION to legislate for a Hawaiian Natives Claim Bill from Congress was the late Stanley McCutcheon; a dynamic attorney from Anchorage, Alaska, who responded to my "telephone call" for help, and together with his partner, Clark Gruening, also of Anchorage, Alaska, came to Hawaii. Before Stanley McCutcheon's confirmation that ALOHA had a just cause and that we had a viable 'EQUITY' in ALOHA'S Cause, not an attorney, not a hawaiian, not a non-Hawaiian, not anyone, except my families and 12 others, believed in me. I was ridiculed, and turned against and it was in sheer desperation that I called to Alaska for help. Stanley McCutcheon's legal expertise and dynamic message throughout the 15 scheduled meetings throughout the State of Hawaii, woke up the entire State of Hawaii; splinter groups sprang up, existing groups came forward and the ALOHA ASSOCIATION gained a momentum of membership that made ALOHA the largest Hawaiian Organization in the history of Hawaii; a membership of over 60,000; 2/3 of Hawaiian Ancestry and 1/3 of non-Hawaiian.......!!

To establish an official record to show ALOHA'S beginning formulation of the HAWAIIAN NATIVES CLAIM BILL, Stanley McCutcheon held a 'closed, confidential meeting' at his place of residence in Kahala, attended by clark Gruening, 4 other ALOHA members and myself. Mr. McCutcheon stressed the importance of keeping the issues discussed here strictly confidential; not for the Press, not for non-Members, and only under extraordinary circumstances, shall I bring it out publicly; was stressed.

During his last speech held on the island of Kauai, for this was the last island and the last meeting scheduled, Stanley McCutcheon was stricken ill and could not continue with his speech......he was taken back to his hotel; where he remained for the two following weeks and when physically able to make the trip, he was rushed to the Los Angeles Clinic, in California. Shortly after his return to Anchorage, Alaska, Mr. Stanley McCutcheon passed away; never having fully recovered from his collapse in Hawaii.

It was only after his death that his colleague, Clark Gruening informed me of Mr. McCutcheon's illness: that Mr. McCutcheon asked him never to reveal his ill-health condition to me, that he had been under a doctor's care and working and travelling were two things he was to stay away from.....not knowing this and subjecting him to 15 meetings, non-stop except for Sundays, proved too much for him... ....for surely, had I known, I would never have asked him to help me and coming to Hawaii....... !!

Two things Mr. McCutcheon asked ALOHA to do: (1) Educate the people and let them know "A RIGHT" existed; we have a 'right' to seek Redress, a 'right' to seek Restitution; and the Big Issue is: the Hawaiians had their Country taken away from them; and (2),ALOHA is to keep their eye on the big target: the Congressional Body; anything on a lesser level, on the State level, stay clear away!! ALOHA has accomplished all two things; we are now in the arena of CONGRESS......!

I am not and have never been interested in politics; the closest I have ever come to politicking is when I put in a bid to be Secretary of our Senior Home Economics class.......!

So, for me to organize and become wholly dedicated to an entity such as the ALOHA ASSOCIATION, must have taken a lot more than just an ordinary passing interest......! A fire, its eerie aftermath, and the whole scenario prompted me to get together a viable, bonifide entity and that was how the ALOHA ORGANIZATION was formed; on June, 1971. It was early that morning at 7, that I was abruptly awakened by our hotel manager; informing me that our car was destroyed by fire that night. I could not believe what I saw; the car was completely burnt, a mass of twisted, black metal........but resting upon all of that, where the back seat was, lay this book, "Hawaii's Story", written by Queen Liliuokalani, with her picture on the cover looking so brilliant and bright......untouched, unburnt, and just as new as the day I bought it. The whole scene gave the manager and I 'goose bumps'; but I realized without a doubt that that book contained something of very great importance; so I carefully picked up the book and in the privacy of my room, I read it!

It was unreal; almost like a fairy tale..............I couldn't believe what I was reading: here for the first time in my life, I was reading the sad, tragic story of our Queen Liliuokalani, the manner in which her Dominion and her Domain was fraudently and illegally taken away from her.............I have read stories about the American Indian and his tragic encounter with the more advance western civilization; but I did not know their people and they seemed so far away from Hawaii; but of my people, it was different: it involved me, our children, our parents, our grandparents, their people beyond them.

This story affected and bothered me a lot and for six months after this incident, I worked on a format on how to take this matter to Congress and get a Bill passed of some sort. This initial beginning did not yield any support; the type I felt was needed for such a big project. I just didn't know what to do. Then one night, I had a dream; it was a simple dream, but it was a personal one and I understood the meaning of it. I had to get the movement going; this is the point I decided to get Mr. Stanley McCutcheon to Hawaii to help me organize THE ALOHA ASSOCIATION....!

A BILL

To prcvide for the settlement of historic claims of the american Natives of Hawaiian Ancestry, and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled. That this Act may be cited as the AMERICANS OF HAWAIIAN ANCESTRY CLAIMS SETTLEMENT ACT.

DECLARATIONS

SEC. 2. Congress finds and declared that -

(a) "By an Act of War, committed with the participation of a diplomatic representative of the United States, and without the authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair"; that in this statement to Congress in 1893, and this later statement after the annexation of Hawaii in 1898,: "but for the landing of the United States forces upon false pretense respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of TREASON by undertaking the subversion of the Queen's Government; but for the presence of the United States forces in the immediate vicinity and position to afford all needed protection and support the committee would not have proclaimed the illegal provisional government from the steps of the Government building; but for the lawless occupation of Honolulu under false pretense by the United States and finally, but for the United States Minister John L. Stevens' recognition of the illegal provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional governmemt, even for a day, and for the sole purpose of submitting her case to the enlightened Justice of the United States"; President Grover Cleveland voiced the feelings of thousands of informed and rational people throughout the world who were outraged at the fact and manner in which the United States took possession of the Kingdom of Hawaii; that by this and subsequent acts, the Hawaiian people once proud Land-owners under an ancient land-owners under an ancient land system, were virtually dispossessed of their lands and their Government and enabled the United States to establish dominion and domain over the people and lands of Hawaii; that claim for repair of these wrongs to the the Hawaiian people was immediately presented to the Government of the United States by Queen Liliuokalan and her heir-apparent, Princess Kaiulani; that on July 15, 1893, a petition for the redress of these wrongs was presented by the Hawaiian Patriotic League, representing 7,500 Hawaiians of that country; that scores of years have passed and nothing has been done; that the ALOHA ASSOCIATION representing over 60,000 life membership, founded specifically to resubmit this same claim to the United States Government petitioned for an investigation and redress of these wrongs;

(b) It is now necessary that a fair and just settlement be made of the claims of the Hawaiian people founded on the lawless, fraudulent and coerced acts of agents of the United States, by which acts the lawful indigenous and sovereign government of the Kingdom of Hawaii was overthrown and the independence and autonomy of the Natives of Hawaii was illegally terminated;

(c) The settlement should be accomplished rapidly, with finality and certainty - without litigation, without creating a ⓐ wardship or trusteeship on the part of the United States Government, in conformity with the existing economic and social needs of the Hawaiian people; and shall include:

(1) Money

(A) That a settlement of a minimum of 1 Billion dollars and a maximum of 16 Billion dollars be established;

(B) That all monies settled in full shall be turned over to the ALOHA ASSOCIATION, whose Executive Board shall handle the distribution of these monies in equal allotments directly to each eligible, enrolled Hawaiian native, certified by the Secretary of the Department of Interior;

(C) This monies shall be deposited in a Hawaii Bank, to be held in ESCROW by the Aloha Association, during which time the enrollment of all Hawaiian Natives of at least 25% Hawaiian-blood content will be conducted and investigated by the Secretary of the Interior, for a period of two years after the passage of the Act. At the end of this two-year enrollment, the Secretary will announce the Cut-Off date, after which no more enrollees will be accepted

(D) Immediately upon passage of the Bill, the ALOHA ASSOCIATION will pay all debts incurred by the Association, since it's founding on June 15, 1971 to the present date; upon proof of services rendered before payment is approved by its Founder and Executive Director, Louisa Makaiwi Rice:

(1) The Executive Board which shall comprise of the Executive Director, Deputy Director, Treasurer and Secretary, shall sign all checks for the ALOHA ASSOCIATION:

(2) Upon verification and proof of their services, by the Executive Director, Louisa Rice, payments will be made to all Attorneys of ALOHA:

(A) The widow of the late Stanley McCutcheon, Mrs. Evelyn McCutcheon of Anchorage, Alaska, will receive payments due her late husband;

(3) Loans made to the ALOHA ASSOCIATION by the respective Alaskan Native Associations will be paid immediately;

(E) Babies born up to the midnight hour on the designated Cut-Off Day, will be eligible for payment and enrolled by the Secretary;

(F) The Secretary shall ascertain how much each Hawaiian Native shall receive, after the above debts have been paid, on the balance of the principal;

(G) The Interest generated from this Settlement shall be allocated into a specific account for the establishment of a "Hawaiian

Tribal Council", said Interest to be computed at the current rate of five per cent per annum;

(1) The Hawaiian Tribal Council shall not be an instrumentality of the United States. The election of this Council will be conducted by the ALOHA ASSOCIATION, and all members elected shall be at least 25% Hawaiian,; upon the formation of this Hawaiian Tribal Council, the ALOHA ASSOCIATION will turn all remaining unclaimed accounts, monies and Interests accumulated over to the Hawaiian Tribal Council;

(H) The assessment and discharge of all fair and reasonable unpaid obligations not to exceed $2,500,000 in the aggregate;

(I) The ALOHA ASSOCIATION will receive and administer the funds and other property provided by this Act to all the enrolled, authorized, eligible Hawaiian Natives; however, the lands already in trust for the Hawaiian people, all other surplus Federal lands, and other rights of its people will be turned over for management and distribution to the Hawaiian Tribal Council upon its formation;

(2) LANDS

(A) That all surplus Federal Lands dating back to the year 1971, be returned to the Hawaiian Tribal Council;

(B) That all military lands no longer in use, be returned to the Hawaiian Tribal Council, such as Fort DeRussy and other military installations;

(C) Fishing rights;

(D) Mineral rights and Geothermal rights, and any other rights on land and in the oceans and ocean bottoms;

DEFINITIONS

SEC. 3. As used in this Act the terms __

(a) "Native American of Hawaiian Ancestry" means a citizen of the United States possessed of 25% of the blood of Hawaiian ancestors who were living on the Islands prior to 1778; and above;

(b) "Hawaiian Islands" means the territory now included in the State of Hawaii;

(c) "Secretary" means the Secretary of the Interior;

(d) "Person" includes individual, firm, association, or other legal entity;

(e) "he" and "his" include he, she, they, it, its, his, hers, theirs;

SEC. 4. The Secretary shall prepare a roll of all Hawaiian Natives who are from 25% Hawaiian blood-content and above, within two years of the passage of this Act and shall maintain such roll thereafter by eliminating the names of deceased Natives and by adding the names of after born Natives and, shall not be transferable upon death. In the absence of sufficient genealogy, an applicant shall submit to the Secretary, not less than 10 names of persons who shall, under oath, give evidence of Hawaiian blood-content of applicant;

(b) Any person who knowingly and willfully falsifies, conceals or cover up by any trick, scheme or devise a material fact, or make any false, fictitious or fraudulent statement or representation, or makkes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, in connection with the qualification or enrollment, of any person for purposes of this Act, shall be fined no more than $20,000, or imprisoned not more than 20 years; or both;

A.L.O.H.A. ASSOCIATION, INC.

SEC. 5. The Aloha Association was founded on June 15, 1971, by its Founder, Louisa Makaiwi Rice, for the sole purpose of petitioning our United States government for Redress of Grievances; securing a Hawaiian Natives Claim Bill from Congress for all the wrongs done to Queen Liliuokani and her Hawaiian people; to be the established body Corporate to receive, secure and distribute all monies and whatever resources to each enrolled Hawaiian Native; Louisa Rice to be spokesperson for these Claims and final Extinquishment of all and future Claims, with advice and consent presented by the majority of all the enrolled Hawaiians, be Extinquished by said spokesperson; that this Organization after distribution of all monies, will turn over all its authority and distributions of lands, its powers, its priviledges, its autonomy to the Hawaiian Tribal Council, which Council shall be established by the Aloha Association, before its Voluntary Dissolution;

its National Headquarters and place of business shall be located in the city of Soldotna, Alaska and its local place of business principally shall be located in the Hoolehua area of Molokai, in the State of Hawaii. The Aloha Association, as a result of an "Involuntary Dissolution" by the Regulatory Agency of the State of Hawaii, for failure tò submit its annual Exhibit by former president, Arthur Kinney, has necessitated its Founder Louisa Rice to reorganize and reinstate its new charter and at a special public meeting held in Molokai, the 60,000 life membership of former ALOHA ASSOCIATION was formally absolved into the new Aloha Association by a motion from the floor; The Aloha Association management is vested in an Executive Board of 4 (President, vice-President, Secretary & Treasurer), and a 15-member Board of Presidents, 2 of which shall be Honorary Board of Presidents;

SURPLUS LANDS

SEC.6. Any provision of law to the contrary notwithstanding, the Administrator of the Genral Services Administration is hereby directed to give to the to the ALOHA ASSOCIATION (subsequently turned over to the Hawaiian Tribal Council, which will be established by the ALOHA ASSOCIATION) the first and prior right to acquire any Federal Lands retroactive to June 15, 1971 within the State of Hawaii which have been determined by the Administration, in accordance with law, to be "surplus" and not required for the needs and the discharge of the responsibilities of all Federal Agencies. If the ALOHA ASSOCIATION elects to exercise its right to acquire any surplus Federal Lands, the Administrator shall convey such surplus Federal Lands to the Corporation unconditionally and without compensation therefor;

2. That all military installations in the State of Hawaii "closed down" shall also be returned to the Association;

APPROPRIATIONS

SEC. 7. There are authorized to be appropriated such sums as may be necessary to carry out the provisions and purposes of this Act.

MISCELLANEOUS

SEC. 8. (1) No provision of this Act shall derogate from or diminish any right, priviledge, or obligation of Native Americans of Hawaiian Ancestry as citizens of the United States, or of the State of Hawaii, or relieve, replace, or diminish any obligation of the United States, or of the State of Hawaii, to protect and promote the rights and welfare of Native Americans of Hawaiian Ancestry as citizens of the the United States or of the State of Hawaii;

(2) No provision of this Act shall demean, , or diminish our Faith, Loyalty and our Love for our Country, nor demean our stabce as American citizens;

(3) That similar to the Alaskan Natives, the Hawaiian Natives be given the "Tribal Status" also;

(4) That the 100-page report by Miss Diane Hansen, former legislator of Hawaii, who made a comprehensive detailed house-to house survey of the plight of the Homesteaders at Hoolehua, Molokai, be submitted of the many wrongs done to the Native people on Homestead lands

on Molokai;

(5) That the Secretary shall keep, maintain and update the enrollment of all qualified Hawaiian Natives until such time as the Hawaiian Tribal Council is officially established, at which time the Secretary will turn over the management of the Hawaiian Natives Enrollment to the Hawaiian Tribal Council;

(6) That any qualified Hawaiian, and, or their children, who had Homestead Lands taken away from t'em by the Hawaiian Homes Commission on the basis that they were not 50% Hawaiian, even though they did possess the required blood quantum of 50% Hawaiian, be given back their full 40-acre Homestead Lands with all their former rights restored, immediately upon passage of this Act;

(7) That a "hanai" or "adopted" person adopted into a Hawaiian family who does not have the required blood quantum of 25% Hawaiian, shall not be qualified to be enrolled as a Hawaiian Native;

(8) That the Extinquishment of the long over-due claim of Queen Liliuokalani to the United States Government for the wrongs done to her and her Hawaiian People, upon the consent of the Hawaiian People by "Majority concensus" in Hawaii, Alaska and the lower 48 Staes, appreciably by a publicized questionaire-survey in the public newspapers for a period of 4 weeks which shall be conducted by the ALOHA ASSOCIATION shall be officially extinquished by the signatures of Louisa Makaiwi Rice and the duly-appointed Board of Presidents of the ALOHA ASSOCIATION:

SUPREMACY

SEC. 9. That this Act shall supercede any existing Act that is in Congress.

(2)

DOMESTIC NONPROFIT CORPORATION

STATE OF HAWAII

MAKE REMITTANCE PAYABLE TO: **DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**
FILING FEE $1.00
YOUR CANCELLED CHECK IS YOUR RECEIPT.
ORIGINAL-RETURN BY MARCH 31

BUSINESS REGISTRATION DIVISION
1010 Richards Street
Mailing Address: P.O. Box 40, Honolulu, HI. 96810

ANNUAL NONPROFIT CORPORATION EXHIBIT FOR THE YEAR ENDED DECEMBER 31, 1983 (YEAR)

CORPORATE NAME AND MAILING ADDRESS:

ANCESTRAL LANDS OF HAWAIIAN ABORIGINLES ASSOCIATION, INC.*
~~C/O JODY RICE~~ ~~P.O. Box 3898~~
~~P.O. BOX 4134~~
~~KENAI~~ ~~Soldotna, ALASKA~~ ~~99611~~ 99669

↓

IF THE MAILING ADDRESS HAS CHANGED, LINE OUT OLD ADDRESS AND TYPE OR PRINT NEW ADDRESS BELOW. (INCLUDE ZIP CODE):

P.O. Box 3898 — Soldotna, AK 99669

OFFICERS: LIST ALL OFFICERS. EVERY CORPORATION MUST HAVE A MINIMUM OF TWO PERSONS AS OFFICERS.

OFFICE HELD / NAME IN FULL / RESIDENCE ADDRESS (Do not list business address.) (INCLUDE NUMBER & STREET, APT. NO., CITY, STATE & ZIP CODE)

ational President / Founder -- Louisa Rice -- P.O. Box 3898; Soldotna, A.K.
eputy Director - Richard DeMello - -- P.O. Box 3898; Soldotna AK
eputy Director - Michael DeMello - 6021 N. Selland; FRESNO CA 93711
Hawaii State Pres. - Samuel Makaiwi - P.O. Box 124; Hoolehua Molokai 96729
Hawaii - V. President - James K. Han - P.O. Box 34; Hoolehua, Molokai 96729
Treasurer - Jeanette Mawae - P.O. Box 68; Hoolehua, Molokai 96729
Secretary - Jane Han - Hoolehua, Molokai 96729

DIRECTORS OR TRUSTEES: LIST ALL. THERE MUST BE A MINIMUM OF THREE DIRECTORS AND AT LEAST ONE MUST BE A HAWAII RESIDENT. RESIDENCE ADDRESS (DO NOT LIST BUSINESS ADDRESS.) (INCLUDE NO. & STREET, APT. NO. CITY, STATE & ZIP CODE)

Pres.-Executive Director - Louisa Rice - PO Box 3898; Soldotna, AK 99669
Director - Richard DeMello - PO Box 3898; Soldotna, AK 99669
Director - Michael DeMello . 6021 N. Selland; Fresno, CA 93711
Director - Samuel Makaiwi - PO Box 124; Hoolehua, Molokai
Director - Tilden Han . PO Box 34; Hoolehua, Molokai
Director - Jerry Kaluna - PO Box 983; Lihue, Kauai 96766
Director - Louis Kahanamoku - PO Box 116; Kailua, Kona, HI 96740
Director - Ray Ewaliko - 2305 W. Anahurst; Santa Ana, CA 92704
Director - Bill Makahilahila - 201 N. Central Ave; Phoenix, AR 85073

SPECIFIC NATURE OF ACTIVITIES (DESCRIBE FULLY. IF ACTIVITIES ARE NOT DESCRIBED, EXHIBIT WILL BE REJECTED. IF INACTIVE DURING PERIOD, STATE INACTIVE. AN EXHIBIT MUST BE FILED ANNUALLY EVEN THOUGH A CORPORATION MAY HAVE BEEN INACTIVE FOR THAT PERIOD.)

Director -- Ted William Carlson - P.O. Box 4797; Kenai, AK 99611
Inactive (1983 only) "
Director - Albert Akana - P.O. Box 155; Kamuela, Hawaii, HI 96743
Director - Richard Hoopii - 2060 Kahekili; Wailuku, Maui
Director - Jeanette Mawae - P.O. Box 68 - Hoolehua, Molokai 96729

DECLARATION

I DECLARE UNDER THE PENALTIES SET FORTH IN SECTION 416-84, HAWAII REVISED STATUTES, THAT THIS EXHIBIT HAS BEEN EXAMINED BY ME, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS A TRUE, CORRECT AND COMPLETE EXHIBIT, MADE IN GOOD FAITH, FOR THE PERIOD STATED.

DATE March 12, 1984 x Louisa K. Rice — Founder / Presiden
(Signature of Authorized Corporate Officer) (If attorney-in-fact signs, attach copy of power of attorney.) (Office Held)

FILE NO. 45 774 D2

Director - Ray Ewaliko - 2305 W Anahurst, CA 92704
Director - Bill Makahilahila - 201 N Central Ave; Phoenix, A

FILE THIS ORIGINAL COPY. PHOTO COPY WILL NOT BE ACCEPTED

(11)

ALOHA Association
Phone 923-1693

P.O. Box 8583
Honolulu, Hawaii 96815

Honolulu Star-Bulletin

Six Sections *Hawaii's Greatest Newspaper* Tuesday, December 12, 1972

Precedent Set in Alaska

New Hawaiian-Claims Drive

By Pierre Bowman
Star-Bulletin Writer

Stanley J. McCutchin, a prominent Alaskan who spearheaded a drive which yielded a settlement of nearly $1 billion and 40 million acres of land for his state's natives, says the same thing can be done for Hawaii's natives.

The Anchorage attorney, in Honolulu with his law partner Clark Gruening, is doing more than just talking about possibilities for native Hawaiians.

The two men are here to throw their considerable expertise and moral fervor behind a recently formed group of Hawaiians dedicated to a settlement of claims and return of lands in Hawaii to native descendants.

The group is ALOHA — Aboriginal Lands of Hawaiian Ancestry.

ITS ORGANIZER, Louisa M. Rice, got in touch with McCutchin after she heard what he did for the Eskimos. She scrounged plane fares, wangled a classic Island house on the Kahala waterfront rent-free, and brought McCutchin and Gruening to the Islands.

They had their first informal meeting last night with ALOHA, and they promised to stay here long enough to get ALOHA moving. They contemplate frequent trips between Anchorage and Honolulu.

In an interview yesterday, the two partners said there are great similarities between Alaskan and Hawaiian natives in land claims from the federal government.

The Alaska Native Claims Settlement Act which Congress passed last year provided the state's estimated 53,000 Eskimos, Aleuts and Indians with a grant of $962.5 million over a 20-year period and 40 million acres of land.

IN 1884, WHEN the Organic Act established a civil government for Alaska, Congress provided that natives should not be removed from lands they used or claimed.

Congress further provided hat terms by which they ould acquire title to those lands would be subject to future legislation, but none was ever passed. When Alaska became a state in 1958, nore than 99 per cent of its 75 million acres were ned by the federal gov nment.

"The native Hawaiian people have a possible claim like we did for the Indians, Eskimos and Aleuts," said McCutchin.

"Broadly, the situation with native Hawaiian people is greatly comparable to Alaskan natives.

"**THERE'S** a difference here—because vast amounts of lands are in the public domain in Alaska, and that kind of land is not available here. But there is some held by the U.S. government, along with the money the native Hawaiians are entitled to.

"The native Hawaiians, as we would say up north, are sort of left lonely on the totem pole."

McCutchin maintains that the only legal means for the U.S. government to acquire land is by conquest or purchase, and that neither of these occurred in Alaska and Hawaii.

"The treaty of Hawaiian annexation was agreed to by persons who weren't Hawaiian," he said. "If you want to look at those treaties, you'll find they were coerced."

Gruening said that when Congress voted on the claims bill last year, "it didn't look at the legal case, but at the ethical considerations."

HE AND HIS partner believe the same thing could apply to Hawaii.

"America has suddenly developed a conscience," he added.

While the idea of a vast settlement for native Hawaiians sounds improbable, and arguments about coerced treaties have been heard for nearly 80 years, McCutchin and Gruening point out that the Alaska case established a precedent which makes it all possible.

With the Eskimos, Aleuts and Indians, any person who could prove one-fourth or more native ancestry became entitled to a full share of the settlement.

To administer it, 12 regional corporations for natives were created, with one more for nonresident natives.

THE LAND is administered through the corporations. Forty-five per cent of the cash settlement is distributed and the rest of the funds are either invested or spent on projects such as health care and education.

The settlement came after six years of work which involved systematic organization of Alaskan natives into a political force.

McCutchin wrote the constitution for the Alaska Federation of Natives, which pushed for the claims bill and became a powerful minority voting block.

Once such a move gets rolling, McCutchin and Gruening explained, it's self-generating in many ways.

With the possibility of vast sums of money coming into a state, bipartisan support is attracted from a broad spectrum of the population.

"**ALL THAT** money spends pretty good," is the way McCutchin puts it.

And when the campaign gets rolling on the state level, it attracts some of the top liberal legal minds on the national level, as well as financial support from a variety of sources.

This at least was the case in Alaska.

To make it happen in Hawaii, McCutchin and Gruening are helping lay out a series of local meetings on all Islands with native groups to expand and fortify ALOHA.

The men predict that with unity, support will come to native Hawaiians much faster than it did to native Alaskans.

IN THE first place, they explain, Alaska's congressional delegation is in sympathy with possible native claims in Hawaii and could give early support to the cause in Washington.

Aboriginal groups across the country gave support to the Alaskan natives, and the men think the same groups would support Hawaiian natives.

"If the Hawaiians stick together like the native Alaskans," said McCutchin, "you watch the legislators jump up and down.

"It's going to work, because it worked before. All the Hawaiians who've been shuffled aside will suddenly be something."

Letter from Kahuku

DEAR MR. EDITOR:

In Hawaii, a house is not a home. It's a bank vault.

Kahuku

HAWAIIAN LAND CLAIMS — Stanley McCutchin, left, and Clark Gruening flank Louisa Rice, head of a Hawaiian rights group pressing for native land claims. — Photo by John Titchen.

Hawaiian-Claims Project Revs Up

National
A.L.O.H.A. ASSOCIATION
Hawaii-Alaska-California-
Arizona-Virginia-North Dakota.

PROCLAMATION

WHEREAS, I, Louisa Makaiwi Rice, in my official capacity as "Founder-National President and Executive Director" of the new-ly Re-instated A.L.O.H.A. Association; the former A.L.O.H.A. ASSOCIATION having been "Involuntarily Dissolved" by the Regulatory Dept. of the State of Hawaii, am no longer the Senior Advisor and life-Time Director of the former A.L.O.H.A. --- and so was it's former president, Arthur Kinney and former Board of Directors, removed; and

WHEREAS, the former A.L.O.H.A. Association was called, "Aboriginal Lands of Hawaiian Ancestry," was removed on July 23, 1979; and the present Re-instated A.L.O.H.A. Association. (Is) now called "Ancestral Lands of Hawaiian Aboriginees," was made on December 15, 1980; and

WHEREAS, the burning of my car, on June 15, 1971, which left "Queen Liliuokalani's book, "Hawaii's Story" untouched, unburned, laying on top of all that Rubble where the back seat was; is the one and only Reason why I ever bothered to make a firm commitment to go to Congress, to seek Restitution and Reparations, for "wrongs" done to our Queen and her Hawaiian people; thus, making me and the Association I represent, the "Client and Policy-makers" in this Reparations Claims and it's final Extinguishment; and

WHEREAS, this is my credibility, my Kuleana and until I came forth to declare these injustices and wrongs done to our ancestral people, no one knew, or cared to do anything about it--and so I acknowledge the Hand of the Almighty in this whole scenario of the Fire and the ultimate claim for Reparations; and

WHEREAS, I and the A.L.O.H.A. body which I represent, do not give authority and permission to any Federal agency, or state agency to speak for us; we have already done more than our Homework: Congressional Hearings has already been held in Hawaii and here in Congress, and our "freedom of speech" is even more precious to us today and the infringement upon our right to continue speaking for ourselves, in our Reparations Claims, is a gross violation of our Constitutional Rights and our aboriginal rights; and

WHEREAS, in seeking redress for our grievances, it does not in any way demean, or diminish our stance as loyal, grateful citizens of this great Country and our acronym "Aloha" stands as a symbol of what a Traditional Hawaiian native is: a friendly, loving, welcoming person and loyal to the flag that protected Hawaii from the enemy on December 7, 1941; and

WHEREAS, in contempt of all the Congressional Hearings on Aloha's Bill and especially the Senate Hearing of the Interior & Insular Affairs committee, chaired by the Honorable Senator Johnston---where in answer to my question regarding Aloha's Bill in Senator Inouye's Study Commission Hearing, he said, "Consider it done! Henceforth, this Hearing will be to consider your Bill as well as the Resolution which has been introduced... and, we will not be bound by the Resolution introduced;" and in final contempt of these words by Chairman Johnston on February 9, 1976 and the objections of the Hawaiians' testimonies against the Study Commission, Senator Inouye pushed it into law anyway; and

WHEREAS, the 60,000 life-dues-paid membership in Hawaii-Alaska--Arizona-Virginia, and 50,000 in California alone, responded & shown confidence in Aloha's Cause---and now, as Founder, I owe an accounting to the people and must make my stand, and my Recommendations for the future, on the past record of the Aloha Association; and

WHEREAS, I beg & pray that the Hawaiian people, the people of America and the President

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and Congress of the United States, respectively, will support & pass ALoha's Reparation Bill; and

BE IT RESOLVED Therefore, that ALoha's Bill, "HR-1944-for Reparations," be returned back to the floor of Congress and passed into Law; and

BE IT FURTHER RESOLVED that the BILL HR-7217-for a Study Commission Group, does not and cannot speak for ALoha's Cause and her Hawaiian people; be hereby Repealed!

BE IT FURTHER RESOLVED FINALLY, that if there is anything I have said, or done in this whole project that has offended, or, hurt anyone, I ask you, "Huikala mai i'au"--- please forgive me"! I ask it in the name of Jesus Christ, Amen!

Senator **Matsunaga**. Our next witness is Jed Carlson. Not here? Helena Salazar? Helena, we'll hear from you.

STATEMENT OF HELENA SALAZAR

Ms. **Salazar**. Good evening, Senator Matsunaga, and Congressman Akaka, and your staff and ladies and men and children.

Before I begin, I believe it is important to note that great and paramount chiefs of our past such as the Princess Elizabeth Kekani Aoupukalani Pratt [phonetic] did not participate in the Great Mahele of 1848, 1850, and in so doing joined the great masses of our landless common people. I am Helena Kalakuakamailc [phonetic] Wilcox Salazar, and I am a descendant of the Princess Pratt. Also I am the granddaughter of Robert Wilcox, first Delegate to Congress from Hawaii. I am also the person represented in the book of the Native Hawaiian Land Trust Task Force and also on page 16, I hereby read and affirm the recommendation from page 5. Also please note the pages 12, 13, 14, and 15 that honors our sacred queen Keoupuolani [phonetic] on Maui, where it shows that religious spirit of unity exists, that is a cultural tradition expressed there.

Also I would like you to know that I have been an applicant with the Hawaiian Homes Commission in 1952 that is just lately being considered.

Senator, that's all I have to say, and for the report will be given later.

Thank you very much.

Senator **Matsunaga**. Thank you very much. The Rice family is well known on Kauai, and I appreciate your remarks.

Our next witness is Ellie Kupau of HPACH. Ellie, are you here?

Jeff Wallace of the U.S. Commission on Civil Rights?

Anne Kauaihilo, are you here?

Next, Ilima Kauka Williams.

STATEMENT OF ILIMA KAUKA WILLIAMS

Ms. **Williams**. I'm glad I made it back in time.

Thank you so much for having the patience to be with us all day, because I was here earlier this morning as we began with the ceremony at the statue.

I thank you, Hon. Senator Sparky Matsunaga and the Honorable Representative Danny Akaka.

My name is Ilima Kauka Williams. Presently I am on sabbatical leave from Leeward Community College where I've been an instructor/counsel for 15 years. I'm working in the legislature getting some experience first hand, finding out how the circus works.

For the past year and a half, I've also had the privilege of working with an ad hoc committee for the native study commission in Hawaii. It's a group of interested people who are concerned that this minority report would come off the boards with the assistance of people who knew their history.

This committee believed wholeheartedly that a wrong had been committed against the indigenous people of Hawaii by the United States of America, and also believe that this wrong should be righted.

The results of the efforts of this committee in part is the minority report of this commission, which was included in volume II.

For the first time in a very long time, the history of Hawaii has been researched and written by Hawaiians. Our future looked very bright with the result of the kinds of talent that have been able to identify and produce through this study commission. A long list of persons testifying on behalf of the minority report also attests to the value Hawaiians have placed on making sure that their history and their culture be recorded accurately.

History has rarely been recorded from the view of the conquered. This is why this passing of time is essential, in order that oppressed people may have an opportunity to get their story told. Today and this week you will hear this story being told. Read the minority report carefully. Listen to the testimony intently, because these are truly the voices of Hawaii.

We have waited patiently, but now we grow weary of waiting. Positive action for the minority report must be taken, now.

I thank you very kindly for hearing this testimony.

Senator MATSUNAGA. Thank you, Ilima. You lived up to that beautiful flower from which you take your name.

Our next witness is Kamakahukilani.

STATEMENT OF MR. KAMAKAHUKILANI

Mr. KAMAKAHUKILANI. Mr. Matsunaga, and Mr. Akaka, aloha.

I am Kamakahukilani. I am a descendant of the first people of this land. I will not bow down to a tyrant.

This is an urgent appeal to your humanity. Justice sometimes falters in America, and its last frontier, Hawaii, but humanity seems to be always there and serves as a last resort when all else fails.

I am appalled at the nonthinking leadership that's been going on since the illegal overthrow of the Queen Liliuokalani. I have been acquainted with the many forms of man's inhumanity to man, the criminal devastation of native cultures.

Hawaii Loa is my ancestral beginning. I speak of and for Hawaii Nei.

And now I speak of Kaho'olawe. What are you going to do about RIMPAC? I have been tracking all matters concerning Kaho'olawe. My ancestors, the first nine crusading warriors up to now 1984. And RIMPAC exercises will soon begin. Japan, Canada, New Zealand, Australia, France, and yes, us too, the United States. I repeat, what are you going to do? I offer you aloha. What do I get in return? E pluribus unum. I am one of many.

I have here a tribute to Toshi and Gottfried, two of the many teachers in my life. They were seekers of truth and justice.

> Although they were cut from different cloth, and their roots traced differently, and they persevered in different domains, both were great warriors and both loved Hawaii and both died in the first month of 1984.
>
> Please send help from your new-found frontiers, Toshi Suematsu and Gottfried Seitz. Send it to our education system, to our legal system, to our social service system, and to our political systems which now pervades all.
>
> Send it silently into the inner ears and preconscious minds of the leaders, the administrators and the followers throughout the top-heavy quagmire we have ill-conceivedly had a hand in creating, or have lethargically allowed to grow cancerous.

> In the meantime, and in the knowledge that the Lord helps those who help themselves, we have the opportunity to cultivate our own inner integrity and responsibility, and to engage further the development of our own patience and to refine our own preparation so that our work yields nourishing fruit in our time and is attendant to our own local geography.

I would like to call your attention to the $1 bill and there, a pyramid; and also your attention to the structure that has been completed on Kaho'olawe. I'd like to call your attention to the facts—the geometrical lines, and then look at the pyramid on that $1 bill. And it says here, "annuit coeptis" which means well, the—power, the undertakings of David. I cannot see this real good. "Novus ordo seclorum." This is when the new age will begin, with Hawaii Nei.

I thank yo very much. And also I's like for you to know I support the minority report.

Thank you.

Senator **Matsunaga**. Thank you very much.

Our next witness is Leona Kalima. Leona.

Then our next witness will be Mamaloa Lilokulani.

STATEMENT OF MAMALOA LILOKULANI

Ms. **Lilokulani**. I come before this special body of representatives of the United States. Mr. Sparky Matsunaga, I came here in protest to disqualify you and anyone that is not Hawaiian. And I will do this solely because I think there is a misunderstanding—oh, just a minute. Mr. Jochanan Amsterdam is present, and I will take a few minutes for him to say what he has to say.

I would like to acknowledge that, and I am very thankful that Louisa Rice is present. I'm still a member of the Aloha Association. And while this organization existed, I only was related to Queen Liliuokalani. I would pick up the ball and puha—in other words, bring it to a successful end. But it had its internal problems because it was something too great for we who are native aboriginal Hawaiian descendants, misunderstood the purpose of it.

I'm very thankful that during that time I'm going to submit my testimony in 1976 when I stood before the Congress of the United States as a citizen of the United States. Since 1977, I was arrested on land that was sacred. My mother spent 4 years being trained to dance before the altar of God, and I felt very sensitive to go back and reclaim the land, not desecrating it to be a public domain for people to trample all over the sacred bounds—that I met Papa, the honorable descendant of Kamehameha II, who reclaimed Hawaii in 1962. And since I met Papa, I haven't been the same person. I prayed that I would have a greater insight, onsight, roundsight, foresight to know where I would fit in this rainbox of heavenliness that would bring us a greater peace, not only freedom from desecrating conditions of religion being tossed to and fro, going underground to pray to God in a very humble way we did long, long ago. And I find that our people are still unawares. You have been freed from being strangers in your own land looking for any more and underneath as beggars begging for a piece of the crumb. That is your whole pie instead of the crumbs. And since my sister died, Princess Luana, the mantle fell upon me, because I had spoken to her before she became very ill, deathly ill, that we were heirs to the throne by way of being related to Queen Liliuokalani I, Lydia

Liliuokalani I. And being very stubborn as I was raised, as a child, to have my opinion exercised no matter what, you know—consequence is I would have to suffer by—I felt a great loss that the queen, knowing the purpose of the Aloha Association—I want to thank Louise for having the intuitive force of righteousness and love for our aina to have started this. And I'm very helpful for all the ohanas that's here who have testified today in their own independent of their integrity. You know, we people are very unique. I was told by Mr. Stamba [phonetic] many years ago that I was a Jew in disguise. Yes. I will admit. I am a Jew. From the house of Israel to Joseph by way of his son Manassah. So I do have the house of Israel in my blood. The fact that he was given in marriage by an Egyptian high priest family, which makes me part Egyptian. So I'm very thankful of—Jochanan Amsterdam would you please stand? You were called. He is now with the Zionland Foundation and he finally challenged me—he didn't seduce me to do it. But he challenged me, his mother, to become involved with Israel. When he goes back for their independent celebration, I hope I will be able to make that trip. And I'm very thankful to have been present to hear my younger son, Maui, relate his endeavors and his integrity of being this oneness, being Hawaiian with almighty God. This is what I'm all about. My kupunas who came here, and I am thankful to Kamaka—Sister Kamaka's testimony—she comes from the original first arriving warriors. I also come from that lineage. And I'm not proud and haughty about having this blessing. There is, where much is given, much is expected, my dear brothers and sisters. And that goes to the committee who has come. I'm not going to throw stones at Uncle Sam, because during the Second World War I toured on a command performance before generals—now today they are generals—at West Point. I'm an honorary life member of the Dietetic Society of West Point. And I'm very thankful—if I could make the trip over on the other side of the island of Molokai, Kauai, Maui, and the big island of Hawaii where I was born I would like to continue to speak. But I will be sending in a documentary to allow through your good fortune of being the chairperson. And you know, I want to say this to you personally, that tree that you dedicated for the veterans of Foreign Wars—they chopped it to bits. And that's a very bad omen. But it's blooming beautifully again, because when it was little, that little, I used to kick it, and dance, and tie ti leaves around, and now I said to myself, you know, that Sparky Matsunaga, he was there to dedicate it to the Veterans of Foreign Wars. And now look at the position. Are you going to be President? No, that's just a little of the Hawaiin humor in appreciating our coming, and I did want to disqualify you, but I'm not. You're doing all right. And so God bless you for coming, and your staff, and your secretary over there, her fingers going, going, I love you all who here today and those who were present, and I say humbly, God bless us all in Jesus' name. Mahalo.

Mahalo.

Senator MATSUNAGA. I was going to signal that time has expired, but I didn't because if you can have a beautiful son like Maui Loa, you must be good inside, really.

Mahalo. And I'm glad you told me about that tree. And I'm glad that it's growing back again, because as you know, it's just like me, now—I'm growing back again.

Our next witness is Steve Montgomery. Is Steve here?

If not, our final witness—not final, oh my heavens, we've got more witnesses.

William Rodrigues, are you here? William, I'm sorry I kept you waiting so long. William.

STATEMENT OF WILLIAM L. RODRIGUES, SR.

Mr. RODRIGUES. Hon. Sparky Matsunaga, Hon. Representative Danny Akaka, staff, and our kupunas over here, good evening.

My name is William L. Rodrigues, Sr., and I am a part Hawaiian descent. I speak in behalf of the last three heirs of the Kamehameha line. These people are the great-great-grandchildren of King Kamehameha the Great. I have the power of attorney to act in their behalf, and these powers of attorney are recorded in the Bureau of Conveyances in both Land Court and Regular System.

I heard mentioned in the opening hearing at Kamehameha Schools remarks made by Mr. Lyman about what the Kahuna said: "When the great Ali'i died their spirits ascended into the skies and someday another will come to take up where they left off."

Well, someone did come, and researched the crown lands for 26 years. He did a wonderful job and was the only man in Hawaii to face grilling by six members of the U.S. Department of the Interior. This was on or about 1964.

He has passed on since finishing the work he was empowered to do. He has recorded 94 deeds throughout the State of Hawaii on all of the crown lands both in the hands of the State and the U.S. Department of the Interior. He has tried his best to bring this matter before the courts, but couldn't get any lawyer to handle his case because either there was a lack of money or the lawyers were afraid to step on some people's toes.

These three heirs I've mentioned are unable to come up with that kind of money to fight for their rights.

The eldest, Agnes Kaeo Akima, is in her late sixties and is on Social Security and partial welfare.

The second, Henrietta Kaeo, is a presser at a drycleaning plant and is 65 years old.

The third, George Kaeo, is a dispatcher at the Young Brothers Barge Co., and is 64 years old.

They are the direct descendants of Kulani Kaeo, King Kamehameha the Great.

We have all 94 deeds, maps, and necessary papers to bear out these facts. We also have a copy of the royal crown title which the U.S. Government has in the Archives.

What I cannot understand is that with all these facts presented to the members of the Department of the Interior, nothing has happened the past 10 years since Mr. Albert Akima died. How long must we wait for the U.S. Government to make restitution on all these lands the Governments is using? It's a shame that we pay a lease for military bases in foreign countries that we are protecting, and cannot make some kind of lease payment for Pearl Harbor, Hickman Field, Bellows Field and so forth, to our own people. The rest of the Crown Lands are being leased out by the State to the plantations and other power people. All lease moneys are going into the State general fund and nothing to these heirs.

In closing, I beg you to make a careful study of this matter so that a wrong can be made right by the Government of the United States.

And as you know, Sparky, I am a veteran of the Second World War; I laid my life on the line for this great country. Now please, let this country here, that we so much love, right a wrong that was done. Can you imagine our Ali'i pressing clothes in a laundry room? I'm ashamed.

People ask me, what are you doing this for? How much are you getting? The only thing that I'm getting is the satisfaction of seeing that a right is done for these people before they die.

Aloha Pumehana.

Senator MATSUANAGA. There are others, as I understand, present who would want to testify. They're not on the particular list, but I will—if they aren't here and would like to now testify, I will call them, but I would ask that you limit yourself, make yourself as brief as possible because I can stay here all night, but the stenographer can't and the others who are being paid will not be paid overtime and I come from a strong union background and I don't want to keep them working.

So we'll go then to Mr. Kaolelo Lambert and John Ulaleo—I understand you wish to testify together—oh, you are alone?

Mr. ULALEO. Yes.

Senator MATSUANAGA. Your name is?

Mr. ULALEO. Kaolelo Lambert-John Ulaleo.

Senator MATSUANAGA. Oh, that's one name.

STATEMENT OF KAOLELO LAMBERT-JOHN ULALEO

Mr. ULALEO. My name is Kaolelo Lambert-John Ulaleo. I am from Keokea, Puna, HI.

Now that a commission has been made up to study the issue of the overthrow of the Hawaiian Government by America, the decision can be only one.

Wrong indeed was done. Treason a crime took on by the bold greed of capitalists from the Northeast of that era, who are not here to hang for such charges. Yet the blood lives in descendants of today with unrest and absolute frustration. And likewise goes for the Hawaiian descendants who are victims of unrest and frustration.

Therefore, if these people involved in the overthrow and treason cannot face the charges, America has no alternative but relinquish her supreme authority. The Hawaiian people should once again take control of their government.

We today are the seed of that event, and the manifestation of this is well within my na'au.

As we so celebrate the sesquicentennial of the missionaries arrival to Hawaii, I would like to make note to the public four excerpts in quotations from Queen Liliuokalani's letter to President Grover Cleveland in 1893.

"That it has been a project of many years on the part of the missionary element that their children might some day be rulers over these Islands and have the control and power in their own lands, as was the case after the revolution of 1887. Mr. W.W. Hall openly stated that they had planned for this for 12 years. It was a long thought of project, a dream of many years. And so said Mr. F.S. Lyman of Hilo, in his speech to the people in the month of January. He said,

> Fifteen long years we have prayed for this, and now our prayers are heard.
>
> The disposition of those appointed to position of authority to act with the missionary element, tends to make the government unstable; and because they found I could not easily be led by them, they do not like me.
>
> The interference of the American minister, J.L. Stevens, in our local affairs, and conspiring with a few foreign people to overthrow me and annex these Islands to the United States, and by his actions, has placed me and my people in this unhappy position.
>
> We have been waiting patiently and will still wait, until such time as the Government of the United States, on the facts presented to it, shall undo the act of its representative.

End of quote. The nerve of those missionary families. Now is the 'oia'i'o. Auwe noho'i e. Aloha 'ino. And that devil, J.L. Stevens, should have been hung, for treason.

I purposely stress elements, and it is because of this very element I am raged with anger and prompted into delivering this message.

As I have been temporarily Noho's by the spirit of that woman through her writings I know that anguish far beyond any normal human existence, for which those people had made her suffer. And the agony and humiliation Queen Liliuokalani carried for 24 years from her overthrow to her death.

And the blasphemy of those involved who have misused the scepter of that heavenly element.

Now I would like to see the descendants come forth and address this matter, and make every amends possible to this disgusting miscarriage, to which their forefathers were an instrument to the situation; by the misuse of this very element. A disgraceful and ungodly miscarriage indeed.

For too long have one and one been three, and it is time they come forth in the grievance of this issue. For now is the time to do so, and if they refuse, then time will be against them, as well as that heavenly element. 'Ike Akua.

Is America also ready to stand trial on charges of treason for her part?

How dare she, America, continue to carry on this charade, by sending a commission and saying, "Go and study the wants and the needs of the Hawaiians." And sending such a high school panel to address the needs. It is not the needs, as much as the issue. Are you, America, ready to stand trial? And in a Hawaiian court? When the issue is resolved, then will the needs be addressed. We no longer can continue this type of politics—a Fun Factory concoction.

The Government which now exists is so torn by fools—politicians—far removed from the originator's idea, yet he be deceased after his revolution for a better government.

So today we continue to have this old order, trying to maintain hold and still lacking the understanding of right and wrong. Well, this is what I call a politician. Where are the Socrates? The men of wisdom? Are there no true Senators? Especially in this situation where justice is not prevailing?

Let's stop this infantile adolescent politics and mature to the wisdom as the heavens have given it to us.

We all know these Islands were illegally taken over, and Native Hawaiian rights violated. Yet we must wait for the slow learners of the American Government, as well as its Congress, its courts, and our false State to conceive this fact. Auwe noho'i e. Aloha 'ino. I thought they suppose to be smart and bright people.

As for the courts, I find this to be the biggest fraud of justice to prevail in our midst. Until America, and her courts, can understand its illegal involvement some 90 years ago, its courts and administration should be deemed a fraudulent caricature, offensively repugnant.

The same, too, would go for our State courts and the State government, which is just a subfactor of this corrupt American system. Our existing, slanted day-care State should forget about its 25th anniversary of pretended falsehood, for it still remains the puppet of American aggression.

We are Hawaiians first, and Americans not even second, but only technically. Our culture and way of life is different from that of the Western world. Yet America, with the help of non-Hawaiian representatives, tries to camouflage it by placing our culture in the category of native American culture. Why, Pele, Hiiaka, and Laka are screaming—the nerve. Again they don't know who we are.

Restore Hawaii's sovereignty and its homeland back to its people. I don't know how many times I must stress this fact, which everyone with the least common sense should know. America is America. Hawaii is Hawaii. It is not, Hawaii is America, nor, America is Hawaii.

Sovereignty cannot be bought. It is priceless. Money has no place in sovereignty. Only through complete genocide—and I stress this point strongly—because only through complete genocide can sovereignty be taken away or lost. Is this what America has done? Or is this what America has in mind? Therefore it is time for the United States to wise up and realize this fact, as well as our fraudulent State.

We, the Hawaiian people, still do have what is rightfully ours by God—our sovereignty. Our existence as Hawaiians is proof of our sovereignty, and that it exists. And any man or people things this is not so, is an ignorant fool. For no one or people has that right.

So, it is time we, the Hawaiian people, start realizing this fact and start exercising our sovereignty. We always had it, but were always misled and suppressed; and most of all, brainwashed to thinking we lost it. Let us all join together and 'oki, and bury that fallacy forever.

How clever those involved and responsible thought they were, but what a low blow to the mentality of man, evern under the eyes of God. An absolutely flagitious [sic] crime born of that element.

Are we so ignorant we can't see this? That whole repugnant affair has been an incongruous, whitewashed, flagitious travesty of the overthrow and our sovereignty up to now. It is time this awareness is known to everyone.

It is time for the ruling class and the cultured intellectuals as well as the intellectuals, to come out from hiding. Come forth, and take on your responsibilities and duties, and fulfill your purpose.

I will let the sound of my voice reach the ears of everyone of my generation and thereafter, and have them know the right from wrong. And when this is all fulfilled, people of the past, our State and America, will be looked at as a time in history when people had removed themselves so far, to not know the difference of right and wrong. They will be amazed, and they will wonder—how possible? How would you feel?

For anyone who knows and thinks nothing of what has happened—the displacement of your mentality is hard to comprehend.

All past generations, by their silence, have been abettors, accomplices to this hideous atrocity. And our generation absolutely refuses to be a party too, in joining the pages of this shameful history bequeathed to us, knowing this incessant avariciousness of evil.

Hatred abounds and the legacy of bitterness is reflected in my generation and it exists. To concede to this atrocity would be absolutely ludicrous and preposterous. For no amount of sophistry can dehumanize the horror of this flagitious crime which, if not reflected, the future generations will face such as inhumane horror, for which all will share the accusations and duly shamed. For there will be no absolution.

Yes, look around you, all Hawaii, for what is happening all about. For the denial of your liberty and sovereignty; as a people, you have remained nonviolent. Yet, your liberty and sovereignty remains to feel good in the hands of those greedy non-Hawaiians who are caught up so deep in this temptation that they know no other.

Your struggle for liberty and sovereignty is paralleled by what is happening around the world. And because of this, the way will be paved for true understanding by man, especially Washington, when your case is understood.

To the Congress—will you go down in history as a Congress who righted the wrong and gave back to a people, as you yourself enjoy, their freedom and government? Knowing too, perfectly well, that Hawaii would never declare war on you.

If not, then the true democracy in the light of American ideology is defeated and cashiered. The incessant despoilment of the Hawaiian people by America and other foreign people, is the work of Satan. If in God you trust, and know his will, then rectify this atrocity and flagitious crime, or seek no absolution even by Him.

Today, as we had then, in 1893, in regards to land reform, the inconsideration by members of such parties as it was then, is today in the guise of the State.

As the greed of such, built into such reforms, the greedy politicians of this State took advantage of the so-called Maryland bill to get its hooks into the bishop estate——

Senator MATSUNAGA. Mr. Ulaleo, you're going off your written text. I had hoped that you had ended when you said, "In closing, I would like to say"—and you've gone double your time.

Mr. **Ulaleo**. OK, well, in closing I would just like to point this out——

Senator **Matsunaga**. I will stop you here, and I thought if once you vent your anger, you will feel better, so I didn't stop you.

Mr. **Ulaleo**. OK, well, I would just like to say this—if all Hawaii must take note and look deeply and strongly, with dignity and self into the intrusion of this abyss of noxious American imperialism, which is in violation of stepping out of its boundaries and violating our boundaries. If not, then we will be faced with a dilemma of that near alien-immigrants, in this our own 'Aina. For the overthrow even in the most sophisticated of minds is intolerable and unacceptable.

To dismiss this would only mean, you are free in chains. To be servile is loathsome. If this be the case, then beyond all words, something is definitely and truly wrong.

As for the missionaries, we can conclude through deed and actions, to look at them, these pious mercenary adventurers, with much skepticism, distrust and wonderment as to what god they look upon.

Senator **Matsunaga**. Mr. Ulaleo, I have been very patient with you. I'm a man of great patience, but I'm going to have to pound the gavel on you.

Mr. **Ulaleo**. OK, in closing, then, on the strength of the almighty God I appeal to your consience that justice and righteousness prevail for the future of your humanity and humankind.

If you are deaf and ignore or disregard so general a request, I look with regret upon your lot as the forces set in motion will be the ruin of your families and the destruction of your people.

Heed to this appeal. I beg you.

Mahalo for your attentiveness.

Senator **Matsunaga**. Well, as I stated, I have been very patient, but I'm going to have to stick to that time.

Mahalo.

And as I said, I can stay here all night, but I don't want to impose that on others.

So I'll call on next, Ms. Parker, Iolanthe K. Parker—is she here? Miss Parker.

STATEMENT OF IOLANTHE KALEIANUENUE PARKER

Ms. **Parker**. Before I begin—brother, that was a wonderful testimony.

Aloha. My name is Iolanthe Kaleianuenue Parker, and I am of Hawaiian descent. My mother is half-Hawaiian and half-Caucasian, and my father is pure Hawaiian. I live with both my parents in Papakolea-Kewalo Homestead, and we've lived there for the last 30 years.

I am here today to give testimony in support of the Native Hawaiians Study Commission minority report for the following reasons:

The minority report gives the true, factfinding account of the U.S. Government and its officials and the U.S. military's involvement in the overthrow of the monarchy in 1893, which was, in fact, an act of treason.

And that this factfinding account was drawn from the Blount report, whereby James Blount's recommendations to the President based on his findings, was that the U.S. involvement in the overthrow was illegal.

And the Blount's recommendation to the President called for the restoration of the monarchy to the throne because the U.S. involvement was in fact an act of treason.

And, furthermore, President Grover Cleveland's opening address to the U.S. Senate in 1894 acknowledges the U.S. involvement as an illegal act of high treason.

Furthermore, my family and I recognize and acknowledge the overthrow of the Hawaiian kingdom was and is wrongful and illegal, and it is treason, and therefore, we demand justice.

Therefore, I am here representing the Parker 'Ohana, my ancestors before me, and my descendants after me—who are here with me in the spirit of aloha—and for those whose veins run red with blood of our kupuna, recognize ourselves as na'oiwi o Haawai'i, the true natives of Hawa'i, and we as an 'Ohana endorse the findings and recommendations in the minority report. We also commend the Native Hawaiians Study Commission minority panel, for their efforts to present the facts and the accounts of the overthrow as it happened in 1893; and lastly, we refute all the findings and recommendations of the majority report, because of the Native Hawaiians Study Commission majority panel attempts to misconstrue the facts and, for the record, rewrites history, are blatantly obvious for their own reasons.

I have a few closing remarks if I may proceed?

Senator **Matsunaga**. You may.

Ms. **Parker**. In presenting this testimony, I have in the past looked over the Native Hawaiians Study Commission report, and somehow in today's process have failed to address the question of reparations. Personally, it's a very complicated question, and I don't know really how to answer it. But now that I recognize my failure in not recognizing it earlier, I'd like to contend with it in a very short way.

And that is—I'm not here to seek reparations, but if it was to come down, one of the first forms of reparations I propose is the immediate moratorium on all sales of Hawaiian land and the restoration of the lands to the Hawaiian people. And we ask that this committee take the minority report as the official report, on behalf of my 'Ohana, those that be with me, until we can take control of our government and our destiny. And we renounce the soon-silver jubilee of this State, for it symbolizes the perpetuation of the U.S. hold over our lands and our people and our destiny.

[Witness spoke at length in Hawaiian.]

Senator **Matsunaga** It's most encouraging to find that the younger generation is learning the native language—truly encouraging. And I'm glad to find that you young ones are beginning to take up the cudgel in seeing that justice is done. And I congratulate you.

Our next witness is Janet K. Samson Tamanaha. Right. We'll be happy to hear from you, Janet.

STATEMENT OF JANET K. SAMSON TAMANAHA

Ms. **Tamanaha**. Aloha, Sparky Matsunaga, Congressman Daniel Inouye, and panel. Aloha Kakou.

Today I am here to testify because I feel, you know—you mentioned that it's nice to hear younger people speaking Hawaiian. Now, I am a Keiki O Ka Aina, and I know no other country than Hawaii, you know? I also served in the Army. My husband's retired from the Army. And I feel sad that Hawaii is in the state that it is. But I feel I see so many intellectual people today, and I see so many people seeking to know more about their rights. I was—I traveled throughout the mainland, to Germany, to come home to study about my home.

The part that hurts is to see that the host country which—host nation Hawaii, that my grandparents came to Hawaii to live here. They loved the Hawaiian people for their generosity, their friendliness, their openheartedness—and I cannot see them being misused and abused the way they have been any longer. I have learned more about it since I have been in school—I've gone to Royal Elementary School, Central Intermedicate, McKinley High School—and I wondered why I was never taught about the Hawaiian history that had to do with annexation. You see, I was taught what was right and what is wrong. I know the difference, whether it be for me or for you. But you, I feel for the Hawaiian people, the aboriginal Hawaiian people, because what has been done is a wrong. It is a miscarriage of justice. And it is time for someone to look into the matter—not as a means to exploit these people, but to help them.

You see hats that say, "Hawaiian—An Endangered Species." Many of you smile. But it is a shame that they have to be by such things, to reach out to people, so that they can get involved and find out what's involved. You know, I was amazed, you know, Sparky, that—excuse me for addressing you by your first name—but I was amazed to find out what I found out in Hawaiian history. Especially, why was I not taught a little bit more about annexation. And I feel that, you know, perhaps the reason is we all have skeletons in our closets. And maybe, you know, we like to hide the things that aren't very nice or might cause us to lose a lot of what we are so used to having.

But when a wrong has been shown—I have always been taught by my father that it should be corrected. And I listened to other people come up here; and Mr. Ontai spoke about education—and I am for the education. But, may I say this much more, I know I have to leave, but what is really bothering me is that, you know, having learned this, I've talked to so many Hawaiian people that I'm even aware of they're right.

And you can't tell a book that is so filled with legal terms and expect them to understand all of it. So I am here in support of the native Hawaiians' claim.

Thank you, very much.

Senator **Matsunaga**. Thank you.

Our next witness is Lois Tyler.

STATEMENT OF LOIS TYLER

Ms. **Tyler**. Good evening, Senator Matsunaga, Congressman Akaka, ladies and gentlemen. I'll be very brief.

I would like to present some information that supports the minority report's position, that a great wrong was committed by the U.S. Government in the overthrow of Hawaii's Queen Liliuokalani, and the responsibility for this action must be borne by the U.S. Government and corrective action taken.

The point I'd like to make is that the overthrow must be considered in context. I'm a teacher of history, and I've been teaching world history for 6 years. And as I do more research, I am constantly amazed that this position is always substantiated. The more I learn, the more I realize the correctness of the minority report's position. A great wrong was done.

The attitudes and policies of the United States and the other Western nations in the second half of the nineteenth century clearly shows the intent of the United States to take control of Hawaii. As evidence, I present the following pages from a book—and I have it here. It's called, "The Growth of the American Republic," and it is written by two well-known historians—Samuel Eliot Morrison and Henry Steele Commager, two highly respected historians.

I forgot to write on my testimony—the excerpt is from pages 406 to 409. And I'm not going to read all of it. I just highlighted a few things just to point out what I'm saying.

"The closing years of the nineteenth century witnessed everywhere the rise of a new imperialism that was part of an international struggle for new markets and sources of supply * * *"—by the way, I'd like to mention that this excerpt is from a chapter called, "Imperialism and World Power"—OK?

After the Civil War the United States kept as two very important ideas the Monroe Doctrine and the expansion in the Pacific area. Secretary of State Seward first inauguarated a clear-cut Pacific policy in the late sixties. So, this is 1860's. Declaring that our commerce in the East had already brought the ancient continents near to use and created necessities for new positions—perhaps connnections or colonies there. Seward embarked a design grandiose in conception. So of course, he got Alaska and then he said that we have to make very firm, friendly relations with China; get the Panama Canal built; and annex Hawaii. Now, this is in 1860, so the goal was already set, very, very early.

I'd like to skip over to the second page, the first column, toward the bottom about three-quarters of the way. After the Reciprocity Treaty made Hawaii very favorable for the sugar indutry, there was a blow—McKinley's tariff hurt the sugar industry, and therefore for these people, annexation was the only answer. "Only annexation could restore to Hawaiian sugar interests their American maket on equal terms."

Now, I won't quote the rest of this, but I think this—if this will go in the record, I think it will speak for itself—that there was a clear intent long before the overthrow of Liliuokalani, that the United States wanted Hawaii.

Thank you.

[Material for the record submitted by Ms. Tyler follows:]

April 16, 1984

Senator Matsunaga, Representative Akaka, and
Members of the Committee:

My name is Lois Tyler. I would like to present some information that supports the Minority Report's position that a great wrong was committed by the U.S. Government in the overthrow of Hawaii's Queen Liliuokalani, and the responsibility for this action must be borne by the U.S. Government and corrective action taken.

The point I want to make is that the overthrow must be considered IN CONTEXT. The attitudes and policies of the U.S. and the other western nations in the second half of the 19th century clearly show the intent of the U.S. to take control of Hawaii.

As evidence, I present the following pages from THE GROWTH OF THE AMERICAN REPUBLIC, 5th edition, Volume 2, 1962, by Samuel Eliot Morison and Henry Steele Commager, two highly respected historians.

Thank you.

Lois Tyler
Lois Tyler
2621-2 Kaaha Street
Honolulu, Hawaii 96826
Phone 946-7662

Nor was the emergence of the United States as a world power an isolated phenomenon. The closing years of the nineteenth century witnessed everywhere the rise of a new imperialism that was part of an international struggle for new markets and sources of supply, such as had led to the colonization of America. Great Britain, after a long and sated indifference, was fired once more with enthusiasm for expansion and power; France found compensation for defeat by Germany in consolidating her African empire; Germany, having proved herself the strongest Continental power, demanded her share of colonial pickings; Japan startled the world with her smashing victory over China in 1895 and won recognition as a great power by her spectacular defeat of Russia in 1905. Europe, having almost completed the partitioning of Africa, began, in rivalry with Japan, to break pieces from the weak Chinese Empire. But in the Western Hemisphere the Monroe Doctrine stood as an insuperable barrier against fresh acquisition of American territory by European powers, although it did not prevent the exploitation of Latin America by European or North American capital. To European and African affairs the American people were completely indifferent; into the maelstrom of Far Eastern affairs they were drawn almost in spite of themselves. But the United States regarded affairs of this hemisphere as her particular concern; in time, as her exclusive province.

After the Civil War the two traditional policies in American foreign relations — the Monroe Doctrine and expansion in the Pacific area — persisted. American interest in the Pacific and the Far East dated back to the old China trade and became vital with the acquisition of Oregon and California. As early as 1844 Caleb Cushing negotiated a treaty with China granting trade and tariff concessions similar to those enjoyed by Great Britain. Nine years later Commodore Perry steamed past the forts at Yedo Bay and opened Japan to the commerce of the Western world. 'It is self-evident,' wrote Perry, who anticipated much of our subsequent Pacific policy, 'that the course of coming events will ere long make it necessary for the United States to extend its jurisdiction beyond the limits of the western continent,' and he recommended a naval base in the Far East.

But the United States was not yet ready to go this far. Secretary Seward first inaugurated a clean-cut Pacific policy in the late 'sixties. Declaring that our commerce in the East had 'already brought the ancient continents near to us and created necessities for new positions — perhaps connections or colonies there,' Seward embarked upon a design grandiose in conception. The purchase of Alaska was one element in this design; other parts of it called for the cementing of friendly relations with China, an isthmian canal, and the annexation of Hawaii and other coaling stations available in the Pacific such as the Midway Islands.

Hawaii, or the Sandwich Islands, had been discovered by Captain Cook in 1778, and early served as a convenient port of call in the China trade and recruiting station for Yankee whalers. By 1840 Honolulu, with whalemen and merchant sailors rolling through its streets, shops filled with Lowell shirtings, New England rum, and

Yankee notions, orthodox missionaries living in frame houses brought around the Horn, and a neo-classic meeting house built of coral blocks, was a Yankee outpost. As early as 1842 Webster assured the islanders that the United States could not permit Hawaii to become the possession of any other foreign power; but it just missed becoming a British protectorate in 1843. A few years later, Secretary Marcy negotiated with King Kamehameha III a treaty of annexation which failed of ratification because by its terms Hawaii was to be made a state of the Union. Seward, too, moved toward annexation, but despite the approval of President Johnson and later of Grant, nothing was done. In 1875, however, the United States concluded with the Hawaiian monarch a reciprocity treaty which granted exclusive trading privileges to both nations and guaranteed the independence of the islands against any third party; nine years later a new treaty renewed these privileges and ceded Pearl Harbor on the island of Oahu to the United States.

These treaties greatly stimulated the sugar industry, which the sons of thrifty missionaries had established in Hawaii, on lands donated by the native princes for religious objects. American capital poured in, sugar production increased fivefold within a decade, and by 1890, 99 per cent of the Hawaiian exports, then valued at $20 million, went to the United States. The islands had, in fact, become an American commercial appendage. In 1881 Secretary Blaine declared Hawaii to be part of the 'American system' and announced somewhat cryptically that if Hawaiian independence were endangered, the United States 'would then unhesitatingly meet the altered situation by seeking an avowedly American solution for the grave issues presented.' Even Cleveland, anti-imperialistic as he was, declared his 'unhesitating conviction that the intimacy of our relations with Hawaii should be emphasized.'

Then came the McKinley tariff which by providing a bounty of 2 cents a pound to domestic sugar dealt a catastrophic blow to the Hawaiian economy. Sugar fell overnight from $100 to $60 a ton, and property values collapsed. Only annexation could restore to Hawaiian sugar interests their American market on equal terms.

This was the situation when, in 1891, Queen Liliuokalani came to the throne, and inaugurated a policy looking to the elimination of American influence, and the restoration of autocracy. This policy, which threatened the position of the powerful American element, excited a prompt counteroffensive. After marines had been landed from the U.S.S. *Boston*, with the connivance of the American minister John L. Stevens, a Committee of Safety consisting largely of missionaries' sons deposed the hapless Queen on 17 January 1893. A provisional government under Chief Justice Sanford B. Dole was set up, which promptly opened negotiations for annexation to the United States. 'I think we should accept the issue like a great Nation,' wrote Minister Stevens, 'and not act the part of pigmies nor cowards'; [1] he did his part by hoisting the American flag over the government house at Honolulu. President Harrison, in full sympathy with this attitude, accepted a treaty of annexation on 14 February; but before the Senate got around to it, Grover Cleveland became President, and hearkened to the appeal of 'Queen Lil.' 'I mistake the Americans,' he said, 'if they favor the odious doctrine that there is no such thing as international morality; that there is one law for a strong nation and another for a weak one.' He withdrew the treaty from the Senate, sent out a special commissioner to investigate the situation, and, when the commissioner reported that the Hawaiian revolution was the work of American interests, aided by Minister Stevens, denounced the affair, and endeavored to persuade the provisional government to step down. The gesture was ineffective and, under the presidency of an American, the provisional government became a permanent one, and Cleveland was forced to recognize the Republic of Hawaii.

Between 1893 and 1898 two developments in the Far East sharpened the demand for the annexation of the Hawaiian islands. The first was the rise of Japan to world power, and the fear of a Japanese inundation of the islands. The second was the prospective annexation of the Philippines, which gave Hawaii a new significance as a naval base. Toward annexation McKinley had no such scruples as had animated his predecessor, but there was still sufficient opposition in the Senate to necessitate action through a Joint Resolution instead of through the normal method of a treaty — as in the case of Texas half a century earlier. Annexation was finally consummated by the Joint Resolution of 7 July 1898. An organic act of 1900 conferred American citizenship on all subjects of the short-lived republic, and the full status of a Territory of the United States, eligible for statehood, on the islands. The government was of the usual territorial form, except that, as in the case of Puerto Rico, the governor could make appropriations by his own authority for current expenses of government in case the territorial legislature refused to do so. A similar provision in the charters of the Thirteen Colonies might have changed the course of history.

Senator **Matsunaga**. Thank you very much.

Our next witness will be Mr. Jim Sullivan. Are you here?

STATEMENT OF JIM SULLIVAN

Mr. **Sullivan**. Senator Matsunaga, Congressman Akaka, and staff, and all you folks here—I share your emotional feelings about the injustice that was done, but—how they say—laulima. I have just one bullet to put in the gun.

I found a letter in the archives written by William R. Castle, of Castle & Cooke fame, where he discusses the secret mission of now-General Shafter. At that time, I believe he was a colonel. If the committee is not aware of the existence of this letter, I can get a copy for you—some part of this proceeding. The point is, while I was in the service I was in Army intelligence. And whether it was foreign policy, it was certainly military policy, and Shafter came over here with two purposes—one publicly stated and one clandestine. And the clandestine purpose was specifically to determine the use for fortress Hawaii in the Pacific—that is, the same way how the British keep the Falklands around the Horn. We can appreciate the strategic importance of Hawaii, but that still does not clean people's hands from the way they have cheated these islands. For a State the size that it is and the amount of commitment to its military obligation, Hawaii has paid its dues more then one time.

And my question to you is, if you do not have this—or it has not been brought up in volume I or volume II, as I say—it's in the archives and it's written by William R. Castle. Now, he is one of those guys right in the middle of that overthrow. And his recollection in his own handwriting discusses Shafter's dual role here as far as military concerns, 10 to 15 years prior to the ovethrow it was told to me, and they're talking about agency—and Stevens' point. This shows culpability because there was an ongoing program. This wasn't some guy coming out of the woods and getting happy with the sugar planters.

And that's all I have to say. Would you like that—I didn't bring it with me, but I can present it to the——

Senator **Matsunaga**. Well, if you will submit a copy of it——

Mr. **Sullian**. I can get that, you know, an authenticated copy from the State archives, if you wish.

Senator **Matsunaga**. I'd appreciate it.

Mr. **Sullivan**. Yeah.

Senator **Matsunaga**. If we don't have it, then we will make it part of the record.

Mr. **Sullivan**. Thank you very much.

Senator **Matsunaga**. Thank you very much.

If we have anyone else, here in the audience.

Ms. **Kalima**. I was in the lua when my name was called.

Senator **Matsunaga**. The lua can do things like that to you sometimes.

STATEMENT OF LEONA MAKAUANA KALIMA

Ms. **Kalima**. My name is Leona Makauana Kalima. Aloha Nui Loa Kakou.

Senator **Matsunaga**. Aloha.

Ms. KALIMA. I have a problem, Sparky Matsunaga, My husband and I filed for Hawaiian homestead land, and I have a problem. I was adopted. My maiden name was Ng, spelled N-g. I went to Hawaiian Homes to apply for Hawaiian homestead land, and the person across the table told me to prove my percentage of Hawaiian. On the document of my birth certificate, my father is still Pake, my mother is Caucasian-Hawaiian. But my mother had told me of my adopted mother who is pure Hawaiian, and my father who was part-Hawaiian, part-Japanese.

When I went to the commission, a Japanese person was sitting on the other side of the desk, and told me, I could not be the successor of my husband's home land, because I could not prove the percentage of Hawaiian I had. I stand before you people and tell me, what nationality do I represent?

Hawaiian, yes. There is more Hawaiian here than Japanese. But how come he could not give me that. Can he prove by any drop of my blood that I am not Hawaiian? Or can I prove—I have gone to family court to ask for my adoption records to be opened. And Judge Vitousek has not yet opened my case. It's been 6 months. I have a problem, people, and it's not only me. Because it does not only affect me. It will affect my children. Now, I have many points here—15, to be exact.

First of all, God influences me. Yes; he does. I'm a born-again Christian baptized in the Holy Spirit and I'm proud of it. And I'm proud to be a Hawaiian, not a—what's that word, aborigine? Where does that come from? Hawaiian. You are Hawaiian. Nothing before that, no. No adjective to that. Just pure Hawaiian.

And by Aloha, we are proven that love may not come to all. They have turned Aloha into a commodity. They sell it over the TV back to you.

Thank you. And thank you for being here.

Aloha Kea Kua. You lead us in our way.

Senator MATSUNAGA. Is there anyone else who happened to have been in the lua when the name was called?

If not——

AUDIENCE MEMBER. Jochanan. Jochanan.

Senator MATSUNAGA. Oh, I'm sorry. Your name? Jochanan Kaui Amsterdam? Oh yes. You may proceed, Mr. Amsterdam. You will be the final witness.

STATEMENT OF JOCHANAN KAUI AMSTERDAM

Mr. AMSTERDAM. Well, the Lord said that the last shall be first.

Dear Senator Matsunaga, Congressman Akaka, members of the committee and panel, your mother, family and friends, aloha.

I'll just briefly present these ideas because you have the record of basically what I am presenting before you. Although crude, yet the ideas are there.

I simply say that we of the Zionland Foundation, a humanitarian, nonprofit organization, are working for intercultural understanding, international education, personal and collective development, and peace. Also, we are particularly emphasizing ethnic or traditional cultures and tribes of which the native Hawaiian is an important representative, myself being a Jew, Mormon, native Hawaiian—native American Hawaiian.

The culture and development of native Hawaiians are within our foundation's concerns and aims, and our present concerns of this committee relative to:

One, the legislative history of the Native Hawaiians Study Commission.

Two, the major differences between the majority and minority reports, and

Three, the question regarding U.S. involvement over the monarchial overthrow, and the effect of the overthrow on Hawaiian land ownership.

Serious attention and effort, with God's aid, are necessary, appropriate and sufficient in managing and resolving these culturo-developmental concerns.

I basically present three points, and then a conclusion. Rather than to go into each point, simply I will mention the importance of the creation of the Native Hawaiians Study Commission. And the importance of that is seen in the existence of this committee here today, and the concern by the Congress—the concern of our good people who are here today. This manifests the importance of the Commission of this particular hearing today and representatives who are present.

We want to also acknowledge and express our appreciation for these concerns, and also express continued success in resolving these issues that we're speaking about at this time.

Second, regarding the difference between the minority and majority reports, these differences demonstrate the challenges that we face—we who are native Americans; we who are concerned Americans; we who are humanitarians; we who are peacemakers; we who are representatives; we who are the children of our Father in Heaven. And we can resolve these particular concerns that are before us. Now rather than to go into the differences and similarities between the majority and minority reports, we're familiar with many of these differences which have been presented.

But throughout the differences there is a thread of misunderstanding that has resulted and that has persisted. It is our hope that we might be able to resolve this thread of misunderstanding, and that we might be able to meet the cultural, educational, developmental needs and peace needs of our native Hawaiian people—and in the process of doing this, that we might be a model and an ensign, even to the countries and people of the world. And as was mentioned, we do have—we of the Zionland Foundation have an institute and interest in the Middle East, in Israel, in Jerusalem. And we also urge consideration in this behalf of King Kalakaua thought in international terms. And we who are native Hawaiians also express our concerns in contribution in an international way. And the model we present and provide in resolving these issues we face here can provide for models even in the Middle East. Examples of this, can they live together in peace. We provide this type of model. Just as a comment, regarding the overthrow, there are many ways of looking at this. The Queen Liliuokalani spoke in terms of yielding her throne, but it was temporary. It was temporary and such time as the U.S. Government shall upon the fact being present due the action of its representative and reinstate her.

Now, at any time, you who are distinguished Representatives of the Government of the United States, the Representatives of the U.S. Government, we may present consideration that such action that has been the understanding on the part of any Representative may be undone and consideration might be given for the restoration of the queen to her rightful position. By doing this, we can acknowledge the culture, the cultural ways and values of a noble and royal people, the native Hawaiian. In the process of doing this, we can also provide a model of hope, a model of coexistence, a model of appreciation for other peoples' cultures, and we might be able to continue forth in meeting the cultural education and good-will needs of our native Hawaiian people. And in conclusion, we also are endeavoring to provide a special cultural educational community called Zionland here and in Israel. We ask consideration in this regard, that you might assist us in the establishment of such a special community. And we can provide more information in this regard.

But in closing, I would like to express appreciation at this time for the opportunity we have had of meeting together as a family and friends on this special evening. And to you, our Representatives, who are here this night, thank you for your patience. Thank you, dear mother, and I want to express an appreciation to our good Lord. And I end this with hope and faith that we might resolve these problems and issues. Thank you.

Senator MATSUNAGA. Thank you very much. Now, the hearing record will remain open for 2 weeks, so if any of you would like to submit anything in writing, you will submit it to the Committee on Energy and Natural Resources, U.S. Senate, in Washington, DC. We'll receive such writing, whatever it is, and it will be made a part of the record.

We've been very patient. Dan, you are being remembered in being humanitarian, and congratulations to you and the staff.

The hearing will stand in recess when the committee will reconvene in Captain cook, HI.

[Whereupon, at 7:50 p.m., the hearing recessed, to reconvene Tuesday, April 17, 1984, in Captain Cook, HI.]

NATIVE HAWAIIANS STUDY COMMISSION

TUESDAY, APRIL 17, 1984

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Captain Cook, HI.

The committee met, pursuant to notice, at 10:30 a.m., in the Yano Hall Community Center, Hon. Spark M. Matsunaga, presiding.

Present: Senators Matsunaga and Inouye, and Representative Akaka.

Also present: James P. Beirne, counsel; Becky Barbour and Nora Melnick, staff assistants.

OPENING STATEMENT OF HON. SPARK M. MATSUNAGA, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator **MATSUNAGA**. The committee will please come to order.

To begin our proceedings, we'll call upon Rev. Sterling to give us the invocation.

[A prayer was said.]

Senator **MATSUNAGA**. Thank you very much, Rev. Leon Stirling.

This is the second of the hearings to be conducted in Hawaii. We'll be going to Maui and then to Kauai later this week. As some of you may have seen over the news, we conducted hearings yesterday in Honolulu. Seventy-five witnesses testified at the hearing. We worked until 7:45, almost 8 o'clock last night. We hope that we'll be able to finish in much shorter order here, so that we might be able to give you a little more time, those of you would wish to testify longer.

As acting chairman of the committee, I am privileged and honored to have sitting with me as honorary members pro tempore of the Senate Committee on Energy and Natural Resources the distinguished senior Senator from Hawaii, Senator Daniel K. Inouye, and the only—the one and only—native Hawaiian to serve in the U.S. Congress, Representative Daniel K. Akaka.

At the outset, I want to thank you all for taking time out of your busy day to be with us here today, and if yesterday's hearing is any indication at all of the hearings today, this will be a very successful one and a thoughtful one for the committee.

We will begin this morning with opening statements by the Members of Congress. And I would like to begin by setting the stage for this hearing by relating to you a brief history of the events that led up to this hearing.

On December 4, 1980, the U.S. Senate unanimously adopted an amendment to establish the Native Hawaiians Study Commission, which I offered to a House-passed bill, with the cosponsorship of Senator Inouye. The House bill was a 1-page bill to provide the establishment of the Kalaupapa settlement as a national park. The bill, which Senator Inouye and I cosponsored and offered to that 1-page amendment, was 40 pages long. So that's the kind of things we do over in the U.S. Senate.

The amendment was promptly accepted by the House of Representatives just about 1 minute before the 96th Congress adjourned sine die. That's how close it came to failing in the Congress that year. The amendment had a long and interesting legislative history, dating back to 1974, when I introduced in the House of Representatives a bill calling for direct reimbursement and restitution to native Hawaiians for the loss of land due to the overthrow of Queen Liliuokalani in 1893. Hearings were held; however, no action was taken that year.

However, the differences raised very important questions about whether or not compensation should be provided to native Hawaiians, in what form the compensation should be, and how it should be distributed. And also, basic questions as to the definition of the term, "native Hawaiian." Now, because of these valid questions, the U.S. Senate adopted a different approach. In December 1975, Senator Inouye introduced Senate Joint Resolution 155, which sought congressional acknowledgment of wrongdoing to native Hawaiians. It also called for the establishment of the Hawaii Native Claims Settlement Study Commission, with a broad mandate to conduct a comprehensive study of the questions relating to Hawaii native claims.

Senate Joint Resolution 155 was referred to the Senate Interior Committee, now the Energy and Natural Resources Committee, and after due consideration, it was favorably reported late in the 94th Congress, near the end of 1976.

In 1977, when I took my seat in the Senate, Senator Inouye and I introduced Senate Joint Resolution 4, providing for the study of native Hawaiian claims. A similar measure, House Joint Resolution 526, was introduced by Congressman Akaka and Congressman Heftel in the House. Our Senate bill passed the Senate unanimously in October 1977, but it failed in the House of Representatives and was recommitted for further consideration to the House Interior Committee. During the remainder of the 95th Congress, the four members of the Hawaii congressional delegation worked hard, real hard to convince those who had voted against the legislation to support it in the House. The amendment adopted in 1980 was the result of these joint efforts and in a way it was a compromise. The resolution's strong preamble acknowledging the U.S. role in the overthrow of the Hawaiian monarchy was deleted, and the Commission was limited to 9 members, although the bill had originally proposed 15. And only three of the nine members were to be from the State of Hawaii. In addition, the Commission's mandate was broadened to include a study of the culture, needs, and concerns of native Hawaiians.

A nine-member Study Commission, which was appointed by President Carter, was unfortunately summarily dismissed by the new President, President Reagan, and replaced with his own appointees.

This new Commission held its first meeting in September of 1981, and as required by law, it filed its report, including its findings and recommendations, in June 1983. Under the provisions of Public Law 96-565, the U.S. Senate Committee on Energy and Natural Resources and the U.S. House of Representatives Committee on Interior and Insular Affairs, have jurisdiction over the report and then to recommend to the Congress what action should be taken on the Commission's recommendations and findings.

Now these hearings today, and the one held yesterday and two to be held on Maui and Kauai are the first steps which we hope will result in the introduction of an appropriate bill addressing the findings of the committee.

Although a unanimous report was desired by all nine members of the Native Hawaiians Study Commission, substantial disagreement arose over the Commission's methodology and its analysis of the facts surrounding the overthrow of the Kingdom of Hawaii, the consequences of the so-called revolution of 1893; and land tenure in Hawaii prior to the overthrow of the monarchy was also brought into question.

Now, citing "fatal flaws" in the Commission's report of the majority, the three Hawaiian members of the Commission, Kina'u Kamali'i, Rodger Betts, and Winona Beamer, filed a supplemental report, with 14 additional recommendations. While the majority of the Commissioners found that native Hawaiians in need of specific types of Federal assistance and recommended increased aid for education, employment opportunities and health, they found the U.S. Government blameless in connection with the overthrow of the Hawaiian monarchy; and further, found no legal basis for Federal action to redress the historic claims of Hawaiians stemming from the events of 1893.

Among other things, the Commission's minority recommended that the Congress pass a joint resolution clearly acknowledging the role and actions of the United States in the overthrow of the Kingdom of Hawaii and indicating a congressional commitment to grant restitution for the losses suffered by native Hawaiians.

The three Hawaiian Commissioners concluded, on the basis of their study, that, while the situation of native Hawaiians is unique and not exactly like that of other native Americans, native Hawaiians have a moral basis for compensable claims in the loss of land rights and interests vested in the domain and dominion of the Kingdom of Hawaii, and that these claims of conscience, as they called it, should be addressed by the Congress.

Our witnesses today have been asked to comment on this finding and the recommendations of the Commission's minority, as opposed to that of the majority; and to address the alleged errors in fact contained in the majority report with respect to the overthrow of the Hawaiian monarchy and its consequences. And, in general, to limit their comments to the major differences between the majority and minority reports of the Commission. The testimony of these witnesses will help the Committee on Energy and Natural Resources to decide whether or not to adopt the minority recommendations.

As one who has worked hard for the last 10 years to resolve the complex issues surrounding native Hawaiian claims, I am looking forward to hearing the scheduled witnesses.

But, before I call upon the first witness, I wish to call upon Senator Inouye for any opening remarks which he may have.

[The prepared statement of Senator Matsunaga follows:]

CLAIMS OF CONSCIENCE
OPENING REMARKS OF U. S. SENATOR SPARK MATSUNAGA AT A HEARING OF THE U. S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON THE REPORT OF THE NATIVE HAWAIIANS STUDY COMMISSION

Yano Hall Community Center
Captain Cook, Hawaii
Tuesday, April 17, 1984

The Committee will come to order. We will now commence the second of four scheduled hearings of the United States Senate Committee on Energy and Natural Resources on the Report of the Native Hawaiians Study Commission. As earlier announced, this Committee will hold similar hearings on Maui and Kauai. Yesterday, we opened the hearings in Honolulu.

As Acting Chairman of the Committee, I am honored and privileged to have the distinguished Senior Senator of Hawaii, the Honorable Daniel K. Inouye, and the one and only Native Hawaiian member of the U. S. Congress, the Honorable Daniel K. Akaka, joining me as "honorary members, pro tempore" of the Senate Committee on Energy and Natural Resources.

At the outset, I thank you very much, Reverend Stirling for that most inspiring invocation. I appreciate very much your important contribution to the proceedings today and your taking the time to participate.

We will begin this morning with an opening statement by me, followed by opening remarks by Senator Inouye and Congressman Akaka. In order to set the tone for this hearing, let me briefly outline the events which have led us to this hearing.

On December 4, 1980, the U. S. Senate unanimously adopted an amendment to establish the Native Hawaiians Study Commission, which I offered to a House-passed bill, providing for the establishment of the Kalaupapa National Historic Park. My amendment was promptly accepted by the House of Representatives and became part of Public Law 96-565, signed by President Jimmy Carter on December 22, 1980.

The amendment had a long and interesting legislative history, dating back to 1974, when I introduced in the House a bill providing for the direct settlement of Native Hawaiian claims. My bill, which was cosponsored by then-Congresswoman Patsy T. Mink, was reintroduced in early 1975 and hearings were held on it during the 94th Congress by the House Committee on Interior and Insular Affairs. Those hearings, which were held in Hawaii, were well attended and helped to focus the attention of Congress on the facts surrounding the overthrow of the Hawaiian monarchy in 1893 and the seizure of lands belonging to the crown and the Hawaiian people. In addition, the hearings raised further questions about whether or not compensation should be provided; what form such compensation should take; how it should be distributed, and the definition of Native Hawaiian.

Because of these valid questions, the U. S. Senate adopted a different approach. In December 1975, Senator Inouye introduced Senate Joint Resolution 155, which sought congressional acknowledgement of the wrongs done to Native Hawaiians. It also called for the establishment of a Hawaiian Native Claims Settlement Study Commission with a broad mandate to conduct a comprehensive study of the questions relating to Native Hawaiian claims.

Senate Joint Resolution 155 was referred to the Senate Interior Committee, now the Energy and Natural Resources Committee, and, after due consideration, it was favorably reported, late in the 94th Congress, near the end of 1976.

In 1977, when I took my seat in the Senate, Senator Inouye and I introduced Senate Joint Resolution 4, providing for a study of Native Hawaiian claims. A similar measure, House Joint Resolution 526, was introduced by Congressmen Akaka and Cec Heftel in the House. Our Senate bill passed the Senate unanimously in October 1977, but it failed in the House of Representatives and was recommitted for further consideration to the House Interior Committee. During the remainder of the 95th Congress, the four members of the Hawaii congressional delegation worked hard to convince members of the House who opposed the legislation to support it. The amendment adopted in 1980 was the result of these joint efforts and was a compromise. The Resolution's strong preamble, acknowledging the U. S. role in the overthrow of the Hawaiian monarchy, was deleted and the Commission was limited to nine members, only three of whom could be residents of the State of Hawaii. In addition, the Commission's mandate was broadened to include a study of the culture, needs and concerns of Native Hawaiians.

A nine-member study commission was appointed by President Carter, but summarily replaced by President Reagan with his own appointees. This new commission held its first meeting in September 1981. As required by law, it filed its report, including its findings and recommendations, in June 1983. Under the provisions of Public Law 96-565, the U. S. Senate Committee on Energy and Natural Resources and the U. S. House of Representatives Committee on Interior and Insular Affairs have jurisdiction over the Report of the Native Hawaiians Study Commission, and it is the responsibility of these two committees to review the Report and recommend to Congress what action should be taken with respect to the Commission's findings and recommendations. These hearings today are the first step in that process which we hope will result in the introduction of legislation addressing the Commission's findings.

Although a unanimous report was desired by all nine-members of the Native Hawaiians Study Commission, substantial disagreement arose over the Commission's methodology and its analysis of the facts surrounding the overthrow of the

Kingdom of Hawaii, the consequences of the so-called "Revolution" of 1893, and land tenure in Hawaii prior to the overthrow of the Hawaiian monarchy. Citing "fatal flaws" in the Commission's Report of the majority, the three Hawaiian members of the Commission, Kina'u Kamali'i, Roger Betts and Winona Beamer, filed a supplemental report, with 14 additional recommendations. While the majority of the Commissioners found that Native Hawaiians were in need of specific types of federal assistance and recommended increased aid for education, employment opportunities, and health, they found the United States Government blameless in connection with the overthrow of the Hawaiian monarchy and, further, found no legal basis for federal action to redress the historic claims of Hawaiians stemming from the events of 1893.

The Commission's minority recommended:

1. That Congress pass a joint resolution clearly acknowledging the role and actions of the United States in the overthrow of the Kingdom of Hawaii and indicating a congressional commitment to grant restitution for the losses suffered by Native Hawaiians.

2. That the U. S. Senate Energy and Natural Resources Committee and the U. S. House Committee on Interior and Insular Affairs determine a just and equitable resolution of compensable claims by Native Hawaiians.

3. That these Committees consult and involve Native Hawaiians to the greatest extent possible in the resolution of these claims, and that any proposed restitution be subject to formal acceptance by Native Hawaiians.

4. That pending resolution of these claims, Congress take appropriate action to assure that all lands controlled by the Federal Government in the State of Hawaii maintain current use and status, and that the archipelagic waters of Hawaii enjoy the same security.

5. That the Congress establish a Joint Federal-State Ceded Lands Commission for the State of Hawaii, to review the present status, use and possible release of federally-controlled ceded lands in Hawaii.

6. That this Commission advise the Congress on the status of the federally-controlled ceded lands in Hawaii, and have the authority to declare such lands surplus and available for return to the State of Hawaii.

7. That Native Hawaiians be included and consulted in

the course of the Commission's review.

8. That Congress, by joint resolution, indicate its commitment to review the implementation of the recommendations of the Federal-State Task Force on the Hawaiian Homes Commission Act.

9. That Congress take appropriate action in the event that its review finds that compliance by the State of Hawaii and the U. S. Department of the Interior has not occurred.

10. That Congress enact legislation granting beneficiaries of the Hawaiian Homes Trust the right to seek judicial review and resolution of abridgement of the Trust.

11. That Native Hawaiians be included in all Native American programs.

12. That a federal-state study be conducted to assess the needs of Native Hawaiians.

13. That consideration be given to the establishment of special Native Hawaiian programs at the federal level.

14. That the Congress adopt a single definition of "Native Hawaiian" to mean any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778, and that proper guarantees to protect the rights and privileges of those now holding or awaiting a Hawaiian Homes award accompany this change.

The three Hawaiian commissioners concluded, on the basis of their study, that, while the situation of Native Hawaiians is unique and not exactly like that of other Native Americans, Native Hawaiians have a moral basis for compensable claims in the loss of land rights and interests vested in the domain and dominion of the Kingdom of Hawaii, and that these "claims of conscience" should be addressed by Congress.

Our witnesses today have been asked to comment on this finding and on the recommendations of the Commission minority; to address the alleged "error in fact" contained in the majority report with respect to the overthrow of the Hawaiian monarchy and its consequences; and, in general, to limit their comments to the major differences between the majority and minority reports of the Commission. The testimony of these witnesses will help the Committee on Energy and Natural Resources to decide whether or not to adopt the minority's recommendations. As one who has worked hard for the last ten years to resolve the complex issues surrounding Native Hawaiian claims, I am looking forward to hearing the scheduled witnesses.

But before I call upon the first witness, I wish to call on Senator Inouye for his opening statement. (Senator Inouye speaks.)

And now, Congressman Akaka, may we have your opening remarks.

STATEMENT OF HON. DANIEL K. INOUYE, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator INOUYE. Thank you.

I'm pleased for this opportunity to be here this morning to participate in this discussion with you. Unfortunately, most, if not all of you, were not able to be in Honolulu yesterday, to listen to the testimony that was provided at the State capitol. Without question, the outstanding testimony was that rendered by the chairperson of the study commission, Mrs. Kina'u Boyd Kamali'i. I think all of us owe Kina'u a special gratitude for her great leadership in drafting this minority report. With much courage and with much clarity, she set forth the findings and conclusions which I hope the Senate will adopt as the official interpretation of the history of Hawaii during that period.

Now, yesterday, one of the witnesses was the Lieutenant Governor, John Waihee. I think his words should be kept in mind by all of us—that apology without restitution or redress is meaningless. And I concur with that, that it's an easy copout. And therefore, I hope that the Congress of the United States will take heed, and together with apology, come forth with some sort of restitution and redress.

I agree with those who have testified yesterday and with the findings and conclusions as drafted by Kina'u, that the majority report findings were not based upon fact, it was a gross distortion and misinterpretation of history, and that it lacked sensitivity. Because without the sensitivity, one could not really understand the problems, or the plight of the Hawaiians of that period.

And so I hope that we will be successful in—with your evidence and testimony—convincing our colleagues in the U.S. Senate that the minority report should be adopted, and that the majority report should be put in the wastebasket.

Thank you.

Senator MATSUNAGA. Thank you very much, Senator Inouye. We will now hear from Congressman Akaka.

STATEMENT OF HON. DANIEL K. AKAKA, A U.S. REPRESENTATIVE FROM THE STATE OF HAWAII

Mr. AKAKA. Thank you very much, Mr. Chairman.

I am delighted and honored to be here today to join my colleagues, Senator Matsunaga and Senator Inouye, in this hearing. I am delighted to see the number of you who are present here, and to see the show of force in presenting your feelings about the report. Also, I am proud to be here as your Representative, proud to be a Member of the U.S. Congress, and proud to be associated with the great delegation that we have from Hawaii in the U.S. Congress.

I want to associate myself completely with the remarks of both Senator Matsunaga and Senator Inouye in presenting their feelings about Kina'u and the great job that she and Commissioners Winona Beamer and H. Rodger Betts have done. I want to mention that these three Commissioners took a position, a difficult position, and faced the adversity of the other Commissioners in filing a minority report. After having read the minority report, and as previously mentioned, in complete agreement with the findings of the minority report, I, too, hope that Congress will accept the recommendations of Kina'u, Winona, and Rodger.

Our chief objective today should be to stress through your testimony the inconsistencies of the final report, volume I, and to emphasize the minority report's, volume II points of rebuttal. The Commission's volume I report, as you know, found that native Hawaiians do indeed deserve aid and Federal assistance in areas such as employment, education, and health, and we agree with that. However, the Commission determined that the United States is in no way responsible for the overthrow of the Hawaiian monarchy, in spite of the reality of the actions of its representatives and forces at that time.

Furthermore, the Commission determined that native Hawaiians have no legal basis for compensation for the loss of aboriginal title or the loss of sovereignty. We disagree with these two findings.

In its criticisms, the minority report, volume II, refutes all of the determinations cited above in regards to legal compensation. Today we look forward to hearing from you.

I join my colleagues in thanking you for coming here today.

Mahalo Nui Loa.

Senator MATSUNAGA. Thank you very much, Congressman Akaka.

We will now go to the witnesses who have been scheduled to testify today. Our first witness will be the Honorable Herbert Matayoshi, mayor of the county of Hawaii. But the mayor called a few minutes ago saying that the weather is so bad over in Hilo that his helicopter is unable to take off, so he apologizes for his nonattendance. However, we have a message from the mayor which will be read by Caren Durante, who will represent the mayor.

Caren, will you proceed to the mike there at the desk. Incidentally, all witnesses will testify from that table.

STATEMENT OF HERBERT T. MATAYOSHI, MAYOR, COUNTY OF HAWAII, AS PRESENTED BY CAREN DURANTE

Ms. DURANTE. Honorable Senators, Congressmen, I have a letter here, testimony from Mayor Matayoshi, addressed to the Honorable Spark M. Matsunaga, U.S. Senator.

> DEAR SENATOR MATSUNAGA: We were very pleased to learn that you will be conducting hearings for the U.S. Senate Committee on Energy and Natural Resources on the Report of the Native Hawaiians Study Commission, in Kona next week.
>
> In my review of information relating to the Commission findings, I find that there is serious need for reevaluation of the findings and conclusions reached in Volume I of the Commission. The study must be done in the context of the Hawaiian experience in Hawaii, and not by the standards of another culture.
>
> I certainly hope that the hearing will present the opportunity for a clarification of the facts and their important conclusions, and that the results will be in the best interests of the Hawaiian people.
>
> Sincerely, Herbert T. Matayoshi, Mayor, County of Hawaii.

Senator MATSUNAGA. Thank you very much, Caren.

We will now hear from the chairman of the county council, the Honorable Steven Yamashiro. Are you here, Steven?

No. We will then proceed to the Honorable Malama Solomon, State senator.

Malama is not here either. I guess the Honorable Dante Carpenter and she are in Honolulu attending the sessions, doing the work they've been elected to do.

We will now here from Mrs. Winona Beamer, who was a member of the Native Hawaiians Study Commission and who served with Rodger Betts and Kina'u Kamali'i as the only three Hawaii members of the Commission. I wish to join with Senator Inouye and Congressman Akaka, as I did yesterday, in expressing my pride in having had Winona, and Kina'u, and Rodger serve on that Commission. Kina'u especially, I think, exercised great courage in putting out a minority report against the Commission's majority, when she was chairperson of that Commission. That took a lot of courage. And I think unprecedented courage, because nearly always, the chairman goes along with the majority of the committee. And one of those who stuck firmly with the chairperson was Winona Beamer. We're very fortunate, and it is with great pride to present to you, Winona Beamer.

Winona.

STATEMENT OF WINONA KAPUAILOHIA DESHA BEAMER

Mrs. **Beamer**. I play hooky from school today, so nobody tell.

"Ke lei mai la o ka'ula i ke kai
"O ka malamalama o Ni'ihau ua malie."

This is a portion of one of our traditional Hawaiian lei chants. It speaks of the lei as a symbol of love, a love that is real to the Hawaiians, a love that is real to the people of Hawaii. Can we make this love real to the Members of our U.S. Congress?

Our U.S. Congress? Is it ours? Will Congress treat us as though we belong to them? Will the Members of Congress be concerned about a people who lived in these Hawaiian Islands hundreds of years before their own ancestors migrated to the continental United States? We, who will be the ancestors of future generations of Hawaiians, are concerned.

We are concerned about the physical and mental health of our children and our children's children. We are concerned about the education of our children, and their children's children.

We are asking our Congress to acknowledge a wrong and to accept the responsibility for an injustice. The ancient Hawaiian said: "He 'onipa'a ka 'oia 'i'o" (Truth is not changeable).

For almost 100 years we Hawaiians have watched our land ownership diminish, and now we have become trespassers on our own land.

In 1843, King Kamehameha III spoke these words: "Ua mau ke ea o ka 'aina i ka pono" (The life of the land is perpetuated in righteousness). This philosophy has survived for 141 years and has become our State motto. We believe in it, and we proudly live it. The life of the land is perpetuated in righteousness.

We believe in righteousness. We know the Members of the U.S. Congress believe in righteousness. We are asking our Congress to make an honest attempt to understand the love and respect the Hawaiians have for their land and for their lives.

The Native Hawaiians Study Commission research and statistics reflect the disheartenment of today's Hawaiians. Our resolution has been shaken, our courage weakened. An ancient Hawaiian proverb tells the whole story in three words: "Lele ka hoaka" (The spirit has flown away, the glory of the land has departed, the person is dead).

Surely there can be reparations to the native Hawaiians in the form of income from the lands. Surely the physical and mental health of the Hawaiians will be improved. And surely better education of the Hawaiians will advance the quality of their lives.

I cannot help but feel the difference, seeing you gentlemen with your warm faces, and you're listening and you're interested in what we're saying—and facing the six Commissioners in Washington.

I still have the same hurt, looking at their faces. They weren't interested in what we were saying. There was no spark of warmth in their faces. And I can't believe they were working on the Native Hawaiians Study Committee.

And we are grateful to you for hearing us and giving us this opportunity. We say "A hiki mai no oukou, A hiki pu no me ke aloha" (may all good be with you, to fill your hearts with love).

Thank you.

Senator MATSUNAGA. And to you, Winona, let me say Na Ke Akua Oe E No Mae Kahe Mahe.

Those of you who intend to testify, will you please register at the desk so that we will have your name and address, and when the committee hearing is printed, we will send you a copy. But unless you give us your name and address, we will not be able to do so. So please, don't forget to do that.

And I failed to mention earlier, but you will be allowed initially 5 minutes to testify. If we have any questions from the panel, then we will ask you questions beyond the allotted time. If you have a lengthy testimony, your entire written testimony, will appear in the record. And so, if you can summarize, especially toward the end if you feel that you will be unable to complete your statement within the limited time, then we would appreciate it very much. And the bell which just went off told me to shut up. We have a red light and a green light on the timer which when the green light is on, that means go. And when the red light comes on, that means your time is up. But we may have questions, if the mood moves us to ask them.

Our next witness is Piilani Desha, of the office of Hawaiian affairs [OHA], State of Hawaii. We'll be happy to hear from you.

STATEMENT OF PIILANI C. DESHA, BIG ISLAND TRUSTEE, OFFICE OF HAWAIIAN AFFAIRS

Ms. DESHA. Thank you, Senator Matsunaga. And good morning to you, Senator Matsunaga, Senator Inouye, Congressman Akaka, and to those that accompany you.

My name is Piilani C. Desha, and I am the big island trustee for the office of Hawaiian affairs. I am here today to provide a limited testimony relative to volumes I and II, in particular, to speak in support of the minority report of the Native Hawaiians Study Commission.

OHA presented its testimony in full in Honolulu yesterday, so that today I will only be dwelling on a portion of OHA's report that was done yesterday—specifically, on the native Hawaiians as native Americans.

It has been suggested that I give you a brief resume of my activities and background. Prior to becoming actively involved with Hawaiian issues, I served as national president of the National Federation of Business and Professional Women in Washington, DC. This is a membership group comprised of 165,000 working women and men throughout the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. I was the only Hawaiian and the only individual from the State of Hawaii to serve in this capacity in the 60 years of existence of this organization.

During this time I also had the privilege to serve our country—hopefully, our country—the United States of America, as an appointee to the 30-member Defense Advisory Committee on Women in the Services. I served this committee for 4 years, from 1975 to 1978—again, the only member from this State and the only Hawaiian, under Presidents Ford and Carter. The latter 2 years I served as chairman of this particular committee, the first person from the State of Hawaii and the first person to serve this committee as chairman for 2 years, in all of the United States.

I also had the privilege and honor of being appointed by President Carter to a 40-member committee, the National Advisory Committee on Women, in 1979, for a 3-year term. And again, the only person from Hawaii and the only Hawaiian.

It was in 1979 that I involved myself with Hawaiian issues, and was elected to serve as a member of the Alu Like board, first time, and Alu Like, as many of you know, is a private, nonprofit social change organization striving toward native Hawaiian economic and social self-sufficiency. I served as Alu Like's president for 4 years, from December 1979 to April 1983. And in November 1982, you saw fit to elect me as the big island's trustee for the Office of Hawaiian Affairs.

Today, it gives me great honor to speak in support of the minority report, particularly on the subject of native Hawaiians as native Americans.

Today, we all know that the United States has shown increasing concern for its native people. Why is there this concern? The concern arises because these native peoples are experiencing problems which were created for them because of domination and economic benefits derived by the United States at an earlier period in time, specifically at the time of the overthrow of the monarchy in 1893. During the past few years, programs aimed at benefiting native Americans, providing reparations and restitution have been the focus of much congressional and judicial action. Reparations in the form of money and land have been given to native Americans and native Alaskans as compensation for lands wrongfully taken from them. One very important group of natives that has been and is being overlooked is the native Hawaiians. I use the term native Hawaiians, here, according to the Federal definition, which is any individual, any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778. This definition encompasses both the Hawaiian and the native Hawaiian definitions as described in the statutes which created OHA.

As a direct result of the illegal taking of property by agents of the U.S. military forces and Government in 1893, the condition of the native Hawaiian today is disheartening. This is evidenced by social, economics, and educational statistics which have already been made available in the report before this committee. Alu Like, Inc., and the Office of Hawaiian Affairs, are the only two Hawaiian agencies who qualify, in certain instances, to apply for certain Federal grants for programs to improve the status of Hawaiians.

Congress has the power to legislate for the benefit of native Americans. This power has long been recognized and endorsed by the U.S. Supreme Court. Based on this, it would seem to me that native Hawaiians, like other native Americans, are also entitled to remedial legislation because they have suffered the consequences, and are still suffering the consequences, of Western conquest.

Congress' trust obligations to native Hawaiians as recognized in the Hawaiian Homes Commission Act and again in the Admissions Act of 1959 would be fulfilled if legislation aimed at improving their status were initiated and acted on immediately. If one does a careful examination of Hawaiian history, a conclusion could be reached without difficulty that participation of native Hawaiians in Federal programs for the benefit of other federally recognized native Americans is long overdue.

Native Hawaiians satisfy the original administrative rules used by the Bureau of Indian Affairs to determine whether a native group deserves Federal recognition.

First: Prior to the overthrow is 1893, the United States had treaty relations with the Hawaiian Kingdom.

Second: Congress has recognized native Hawaiians in a number of acts by explicitly including them in the Native American Program Act of 1974 and in the Comprehensive Employment and Training Act of 1978 in the Indian Manpower Program; also the Hawaiians were recognized in 1978 in the Native American Religion Act.

Third: The Hawaiian Kingdom existed from 1810 to 1893, and was recognized by foreign countries including Russia, France, and the United Kingdom. This, in itself, is sufficient to establish the fact that our Hawaiian Government was accepted by third parties.

Fourth: The land tenure system in Hawaii was seen as one involving collective rights to the land. This system continued in existence as recorded in our history by the Constitution of 1840, the Great Mahele in 1848, and when the U.S. court found that the King did not own crown lands as an individual, but that the lands were reserved to the office of the Crown whose chief beneficiaries were the Hawaiian Nation and its people.

Fifth and last: Hawaiian history tells us that native Hawaiians once exercised political authority over themselves. We know that Kamehameha I and the other Kamehamehas who followed, ruled these islands as an absolute monarchy until replaced by a constitutional monarchy. Today, a form of political self-governance still remains through the Office of Hawaiian Affairs and the Hawaiian Homes Commission.

It is clear to me that native Hawaiians meet the original requirements set forth by the Bureau of Indian Affairs to receive Federal recognition. A change in the rules by the Bureau of Indian Affairs in 1978 to accommodate native Americans geographically on the continental United States is unfair to native Hawaiians, another group of native Americans.

Federal recognition of native Hawaiians as native Americans is long overdue, and I urge this committee to carefully review the facts and then to act positively to right the wrong that has been done.

And I thank you very much for the opportunity to be with you today.

Senator MATSUNAGA. Thank you very much, Piilani. We appreciate your testimony.

Our next witness is Mr. Rod Burgess, also from OHA. Are you here, Rod? We'd be happy to hear from you.

STATEMENT OF RODNEY KELIIMAHIAI BURGESS, TRUSTEE-AT-LARGE AND VICE CHAIRMAN, OFFICE OF HAWAIIAN AFFAIRS

Mr. BURGESS. Aloha Kakou, Senator Matsunaga, Representative Akaka, Senator Inouye.

My name is Rod Keliimahiai Burgess. I am the vice-chair for the Office of Hawaiian Affairs and recently served as a member of the Federal-State Task Force of Hawaiian Homes, which is reporting now before the Department of the Interior and the Governor.

I would like to speak today on the portion of our recommendations to volume II of the Native Hawaiians Study Commission Report, on the subject that there be a single definition of who is a native Hawaiian.

We are one people. There should be one definition. My decision to focus on this single area of the report at this time should not be construed as an indication that I do not enthusiastically support the other recommendations which were adopted in resolution form by the OHA Board. In fact, with this committee's indulgence, I hope to give additional testimony later this week on Kauai covering a different aspect of the report.

In 1920, Prince Jonah Kuhio Kalanianaole in an eloquent address before the U.S. Congress urged the adoption of the Hawaiian Homes Commission Act. Kuhio said: "The Hawaiian race is passing. And if conditions continue to exist as they do today, this splendid race of people, my people, will pass from the face of the Earth."

Territorial Senator John Wise, Kuhio's good friend, who initiated the legislation which eventually became the Hawaiian Homes Commission Act, wanted the law to benefit all Hawaiians, regardless of the amount of Hawaiian blood which flowed in their veins. Later, Wise and Kuhio suggested 1/32 as the least amount of Hawaiian blood necessary to qualify for their homestead benefits.

It is not generally known, but that definition—the 1/32 blood quantum requirement—was actually adopted by the full U.S. House of Representatives back in 1920.

Back in Hawaii, however, opposition developed from sugar, ranching and newspaper interests who wanted to restrict the amount of homestead land available to Hawaiians. These powerful interests succeeded in mounting an extensive lobbying campaign in Washington and in delaying final passage of the act until Wise and Kuhio finally agreed to a 50 percent blood quantum limitation. This they did with great reluctance, because they correctly predicted that the number of full and half Hawaiians would rapidly decline as Hawaiians intermarried with other races. In 1920, there were about 24,000 pure Hawaiians and about 18,000 part-Hawaiians. Today, the State Health Surveillance Program estimates that about one-quarter of the Hawaiian population, roughly 45,000 people, are at least half Hawaiian. That means that about 130,000, or three-quarters of our people, have less than 50 percent Hawaiian blood.

One contemporary historian, speaking of the 50 percent blood quantum requirement for the Hawaiian homes beneficiaries said: "Pressures from special interest groups, all with some vested interest in limiting the number of eligible homesteaders, ultimately succeeded."

So the Hawaiian people have led this blood quantum requirement forced upon them by foreigners and special interest groups. It was not the intent of the framers of the act, who were Hawaiian. Senator Wise, a political pragmatist, said: "We came over here as beggers and we took what we could. I was told a long time ago that one of your proverbs was never to look a gift horse in the mouth, so we took what we could get."

Years later, social historian Gavin Daws wrote: "Once again the well intentioned white man had control of the native's land and was setting out to teach the Hawaiian how to be Hawaiian."

Daws was speaking of the composition of the first board of trustees of the Bishop estate, but the quote seems to hit the mark here.

The 50 percent blood quantum restriction has created two classes of Hawaiians. It has divided and separated the Hawaiian people. It has caused dissension within the Hawaiian community and real hardship among Hawaiian families. When a half Hawaiian homesteader dies, the spouse and children must be evicted from their home if they have failed to meet the blood quantum requirement.

In addition to the Hawaiian Homes Trust, the 50 percent blood requirement also applies to the Ceded Land Trust, from the OHA, the Office of Hawaiian Affairs, gets the bulk of its income. Although OHA is required to serve all Hawaiians by statutory mandate, we cannot use this ceded land income for the benefit of anyone less than 50 percent Hawaiian blood. As a result, our lands are tied, and OHA has had a very difficult time in carrying out its mandate to better the conditions of Hawaiians and native Hawaiians.

Congress today recognizes two definitions of native Hawaiian. One is the 50 percent definitions of native Hawaiians. One is the 50 percent Hawaiian homes definition. But for all Federal programs, a native Hawaiian is anyone with even a drop of Hawaiian blood.

The Office of Hawaiian Affairs strongly urges Congress to adopt this second definition as the only one which applies when the words, "native Hawaiian" are used to identify beneficiaries of the Hawaiian Homes or Ceded Land Trusts.

We also feel strongly that when this single definition is adopted, there must be adequate and proper guarantees to protect the current beneficiaries—those of 50 percent blood—of the Hawaiian Homes Commission Act. All individuals now on the waiting list for a Hawaiian homes award must be taken care of before any new applicants are considered. Many of the 8,000 Hawaiian families who are presently on the Hawaiian home list have been there in excess of 25 years. Many have died, never receiving an award. My father is one of them.

I thank the members of this committee for their consideration of this very important recommendation. We Hawaiians are one people, and must no longer be divided by foreign edict.

Mahalo.

Senator MATSUNAGA. Thank you very much, Rod. I think you brought to the attention of this committee certain facts which had not previously been brought to the attention of the committee.

Any questions?

Our next witness is Charles Rose. Charlie, are you here? No; I guess not.

Our next witness, then, will be Mr. David K. Roy of Kailua-Kona. Are you here, Dave?

STATEMENT OF DAVID K. ROY

Mr. ROY. I'm really happy to be in front of you again, Sparky and Dan, Senator Inouye and Senator Matsunaga, as well as Representative Dan Akaka. All of them are my good friends.

We have been involved in critical issues previously. Nothing quite as critical as this one. Unfortunately, I was not fully able to prepare written reports for you at this time. However, they will follow in writing.

Senator MATSUNAGA. Fine, and that written report along with your oral testimony will be in the record.

Mr. ROY. What I'd like to say is that there is very little that can be said which has not been discussed in the minority report, which I can add to, really. And what has been said is something with which I thoroughly agree and can only embellish upon emotionally. So therefore, I would like to limit it to the areas of the overthrow of the monarchy and the parts of the Americans and their involvement.

I forgot I had to wear glasses.

It is my hope that during your limited time in this process, you'll be able to formulate the assessments of—reflecting the truth involved in the overthrow of the Hawaiian Kingdom and the culpability of the U.S. Federal Government through its Minister Plenipotentiary and Envoy Extraordinary, John L. Stevens. Whatever may be said, in perpetration of an act resulting in the overthrow of the Government and the representative of that Government turned to our Federal Government for support and assistance and it was not forthcoming.

For whatever reasons there may have been, the facts remain that he perpetrated the act. Now, justice is predicated on morality, really. And in the development, as I understand, of our laws, it's the very basis of it. It goes down to moral justice. And however they may try to deviate from that, it is my observation that when the truth comes out, and everything settles down, it is justice that prevails based on that very morality—which has been promulgated by the missionaries that first came down to these islands.

The Hawaiian Kingdom was a government whose sovereignty was never disputed overtly by any country including America. However, for reasons suspected but never acknowledged, this recognition of the monarchy was rejected in the person of John L. Stevens, the minister of the interior, who in 1889 was appointed by President Harrison Minister to the Hawaiian Islands. Shortly afterwards, his title was changed to that of Minister Plenipotentiary and Envoy Extraordinary. By definition, he was one having full powers, unlimited, an ambassador or government agent to a foreign court, given full powers.

With this in mind, how can it be said that the United States did not specifically instruct him to do what he did, therefore, they could not be held responsible for his actions? In my mind, specific instructions notwithstanding, he was the United States personified, with full authority. Therefore, through his representations, the United States was an accessory to the fact, to be considered every bit as guilty as the perpetrator of the act. The presence of absence of specific instructions is immaterial and after the fact. It does not relieve the United States of responsibility for the acts of its duly appointed representative any more than the Federal Government is relieved of responsibility for the mining of the Nicaraguan waters by the CIA—by rebels actively supported and assisted by the CIA, as I have heard.

The failure of America to afford restitution for the nefarious acts of its minister and military, and the subsequent taking of lands without compensation, would leave a bitter taste in my mouth, with complete disillusionment in what I have been taught with respect to justice and fair play for which America stands. In the interests of brevity, I will limit my testimony to the extent that I fully subscribe to the positions and contentions as set forth in the resolutions drafted by Kaulana Na Pua appended to my written statement.

The minority report divulges the facts as I know them, accurately and abundantly. And there is nothing I can add to further clarify the matter.

I would like to say that the revolution of Americans who had accepted Hawaii as their new home did not begin in the reign of King Kalakaua and Queen Liliuokalani with people like Sanford B. Dole, Lorrin Thurston, John A. King, W.O. Smith, or P.C. Jones. But rather with the insidious, though in some cases well-meaning, overt influences of missionaries and well-favored people of similar ilk—Garrett P. Judd, Armstrong, Bingham, Cooke, and others who successfully brainwashed and confused our alii into following their lead, divesting themselves of their ancient principles, making it possible for the haole to replace the Hawaiian in Hawaii.

The overthrow of Queen Liliuokalani was a culmination of one long and continuous act of revolution. I respectfully submit that in as much as American citizens played such a major role in the further plight of the Hawaiian people, and who were so closely supported by the American Government, along the way—particularly at the end; and in as much as the Hawaiian lands were illegally taken by the Federal Government without due compensation; and that the same Federal Government has not admitted their culpability by implication in many of their acts subsequent to annexation; it is eminently clear to me that restitution lies with the Government of America.

With regard to the problems of education, social service and the like, to suggest that the burden rests with the private sector is like suggesting that the survivors of the Holocaust in World War II must bear the burden of restitution.

In closing, let me say that what there is to say has been thoroughly discussed in the minority report, and I am among those in complete support of its findings.

Thank you.

Senator MATSUNAGA. Thank you very much, Dave.

Our next witness is Mrs. Velma Kekipi.

STATEMENT OF VELMA PAPAHILEIALOHA KEKIPI

Mrs. KEKIPI. Senator Matsunaga, Senator Inouye, U.S. Representative Akaka, everyone here—Aloha Awinala Ia Oukou (Aloha to all of you this afternoon).

Mahalo Nui Loa (Thank you very much) for participating in these proceedings. Velma Papahileialoha Kekipi Ka'u Inoa (My name is Velma Papahileialoha Kekipi). I am a native Hawaiian of 50 percent third-generation sansei Kepanee (Japanese), and 50 percent aboriginal Hawaiian descent. I am happy I am an American citizen, especially since I am female. And I am proud that I am Hawaiian.

In the release from Senator Matsunaga's office dated February 24, 1984, it stated, and I quote:

> Noting that there were sharp differences of opinion among the members of the Native Hawaiians Study Commission with respect to the role of the United States in the 1893 overthrow of the Monarchy, Matsunaga said that the Senate Committee will address this issue during its hearings and further deliberations.

I would like to share some of my observations and mana'o i'o (feelings) and kalamai (phonetic)—I'm very emotional—I'll stay within my 5 minutes. Yesterday I only did 2½ minutes. I will be reading my full——

Senator MATSUNAGA. Go ahead.

Mrs. KEKIPI [continuing]. But I may get emotional, so kalamai.

First of all, I would like to joggle your memory banks. The Native Hawaiians Study Commission goes back to President Carter's administration. On the very last day of President Carter's term, he appointed nine members to this Commission. His selections were all Democrats. When I heard of his appointments I said, Oh, no, here we go again, gonna be another political football game. And sure enough, when President Reagan took office, one of the first things he did was to cancel the Commission. He later reestablished the Commission and announced all of his selections, who were all Republicans.

This is a classic example of American politics. The issue is just being used to score points, and votes, and to save face. How could the Native Hawaiians Study Commission come out with any honest and legitimate recommendations which would advocate any further claims to the U.S. Treasury when the deficit budget is such a critical situation?

Now, for the second part—the political and economic and national pride that was here and elsewhere that triggered off the 1893 overthrow of the monarchy. I would like to recommend that you refer to the Blount Report. Colonel Blount had done his report during those times. He was commissioned by President Grover Cleveland to investigate the investigations of our ali'i. The Blount Report confirms the role of the United States in the 1893 overthrow of the monarchy. On December 18, 1893, President Cleveland went before a joint session of Congress and admitted that "a grave injustice was caused to a sister nation." It is all there in the annals of our Congressional Record.

The question is not if the United States had a role in the overthrow. The question is, how to work things out amicably so that the United States could save face.

During the years following 1893, the process of trying to undo something that was done was very difficult and embarrassing for the United States. When our ali'i was asked about the handling of the American leaders implementing the overthrow, our ali'i answered that they would be tried for treason. This is something that the U.S. Government could not allow publicly or officially. To have American citizens tried on foreign soil for treason and found guilty is in direct conflict with its constitutional guarantee to American citizens of freedom of speech and freedom of the pursuit of happiness.

The deliberations took years, until our ali'i agreed to drop the treason charges, and only ban the leaders of the overthrow from the islands, never to return again. But the leaders of the overthrow who took over the use of approximately 2.1 million acres of land formed the Republic of Hawaii, and refused to restore the monarchy or return anything that took over the use of.

I could go into more details, but because of the time restraints, I would like to close quoting another ali'i, King David Kalakaua, brother of the ali'i, Queen Liliuokalani, who was overthrown. He was the first head of any government to go around the world.

This is an excerpt of his farewell speech, and I believe it is very appropriate for these times. It is quoted from Ralph Kuykendall's third volume, "The Hawaiian Kingdom," page 228:

> Around this table are gathered people of many nations. In common with my predecessors, I desire the best welfare of all who gather under our flag in my dominions, and I believe that you who come from other lands, bringing with you the wealth, enterprise, and intelligence of those lands, sympathize with me in my desire to protect my native Hawaiian people and strengthen my nation.
>
> To do this we must work in harmony under the Constitution and laws, and recognize cheerfully the fact that Hawaii, as one of the family of nations, must be governed in accordance with the ideals which control constitutional governments.
>
> We have many difficult questions to settle arising out of our peculiar situation. They demand the best statesmanship and patient investigation. I am in hopes, while absent, to gather some ideas which shall aid in their solution.
>
> If there have been mistakes in the past, let us profit by the lessons of experience, and with honesty of purpose let us press on to a future which I trust may be bright with prosperity and hopefulness.

Dated January 14, 1881, by King David Kalakaua, Iolani Palace, 9 p.m. in the evening.

Mahalo Nui Loa.

Senator MATSUNAGA. Thank you. Thank you very much.

Our next witness is Linda Dela Cruz. Linda? Is Linda here? No.

Then we'll go next to the Reverend Stirling. He did the prayer in the beginning of the hearing.

STATEMENT OF REV. LEON K. STIRLING, JR.

Reverend STIRLING. I'm Leon K. Stirling, Jr. I was born and educated. I was commissioned as a second lieutenant in the Infantry Reserve in Oregon State College, 1939. This afforded me the privilege of reporting for active duty on the morning of December 7, 1941.

I served in the Pacific with combat on Iwo Jima and Okinawa. I also participated in a minor role in the signing of the armistice in Seoul, South Korea, in 1945.

My appearance before you this morning is predicated upon dissent—complete dissent with the assumptions of the majority report of the Native Hawaiians Study Commission.

My presence here this morning binds me to history and to hundreds of others, some openly and some within the privacy of their inner beings, seeking simple acknowledgment and recognition of a very demeaning and insidious deed.

Please, gentlemen, do your best to adopt the minority report. The minority report demands our united support. My remarks specifically refer to two terms used in the report, "attitudinal errors" and "conscience." Both terms are supportable and must be adjudged. Senator Inouye touched upon this when he spoke of the absence of sensitivity in the majority report. Winona spoke of this, when she said the faces were cold and hard. Insensitive. I'll relegate my remarks to attitudinal errors. Perhaps this is rather nebulous, but it must be adjudged.

World War II ended with the signing of an armistice almost 40 years ago, an armistice that was brought about by the explosion of two devastating bombs. The terms of the armistice were generous. The bombs and guns were silenced. But, gentlemen, the seeds were planted. The Western Powers had been brought to their knees and humiliated. Pearl Harbor, Manila, Corregidor. Not one ship, not one grain could be sent to them, to help them. Singapore, the Raffles Hotel they were sipping their tiffin and their stingers. And they continued to do this while their whole world crumbled down on them.

Gentlemen, all the second-class citizens of the world took note of this humiliation. Those whose lands had been taken because they deemed unworthy of their own lands—it was taken from them. Our enemy also took note and diligently watered these seeds of humiliation. Attitudes should have changed, but they did not. Vietnam, humiliation. We were supposed to go over there and blow those people away. But yet we ended up with Americans running and leaving their friends, leaving their armor, leaving their integrity. Cuba, San Salvador, Lebanon, humiliation. Second citizens have changed. Second-class citizens have changed.

I think you're familiar with this, and I go back to the sensitivity that Dan spoke of. And what Winona said. We are different. I just wish some of the haole Senators were here today. We have different feelings. Because of the years of this arrogant pride, sweeping aside the local person. We felt it, even in sports, playing football. We gave a little extra, because we were called natives. You went a little extra, Sparky, you and Dan. One of the finest fighting units that ever came out of America. The little extra, because I know that you could understand this kind of humiliation that went through.

Gentlemen, today, almost 100 years after the overthrow of Hawaiian sovereignty we are still in the same ballpark, with the same ground rules. One of your able colleagues, Senator Moynihan, last week—he just resigned a very important post, thoroughly disgusted with the machinations of secrecy and intrigue. Very comparable to Mr. Stevens and the Secretary of State Mr. Foster. Our own President waited until you left to come here, spring vacation, to manipulate the defense budget for his own personal policies.

I ask you today, are we to gather again 100 years from now to say that we had nothing to do with the internal affairs of San Salvador and Lebanon or the other countries? Are we going to go through a hearing like this where we say we had nothing to do with the overthrow of Liliuokalani? Same ball game, gentlemen. Same ground rules. And how utterly sad.

Let me conclude by going back 91 years to November 20, 1892. Please remember, in those times, in the correspondence between Stevens and the others, and General Schofield, the terms "annexation" and "control" were used synonymously. In a confidential letter dated November 20, 1892, Mr. John L. Stevens of the U.S. legation in Honolulu writes to the Honorable John W. Foster, Secretary of State, quote: "It is unnecessary for me to allude to the deep interest, and the settled policies of the United States in respect of these Islands" from the official days of John Quincy Adams and of Daniel Webster to the present time.

The report goes on referring to Britain's interest and the need for boldness to take control, from the times of John Quincy Adams. I didn't say this. Mr. Stevens did, in a confidential letter to Mr. Foster. We're aware of the British interests. The apparent heiress, Kaiulani—a British father. Kalanianaole, Kawananakoa all educated in Great Britain. Very close relationship.

Today, thanks to Kina'u and the others, just as Mr. Stevens pleaded for boldness, we say that this is a time for boldness for all of our people.

Mahalo.

Senator **MATSUNAGA**. Thank you very much, Leon.

Our next witness is Mr. Sonny Kaniho. Sonny.

STATEMENT OF SONNY KANIHO

Mr. **KANIHO**. Aloha. My name is Sonny Kaniho. I didn't expect to be called this morning, but however, I would for my testimony—I'm sorry I didn't get anything prepared for this. However, I wasn't expecting to be called. But anyway, I want to thank the committee for asking me to present some kind of testimony.

Now, one thing I would like everybody to know, I've been on the Hawaiian Homes Commission waiting list for 29 years. And I think that's a little bit too long for restitution or whatever the word would be—cannot replace—or, apology cannot take its place. But there are many Hawaiians before me on the list, that I recognize in the audience, for over 32 years. Then again, I will say, that is something little bit too long, and what I was looking this morning for, is for the Hawaiian Homes Commission to represent the native Hawaiians and however, they did not show. But the organization of the Office of Hawaiian Affairs is here this morning. They represent the people of Hawaii, so it was nice to see all of them here today.

And thank you again for asking me to speak.

Mahalo.

Senator MATSUNAGA. Thank you very much, Sonny.

Our next witness is Mr. Alika Cooper.

He's not here. Our next witness, then, is Naleialoha Napaepae, president of Kahua NHP.

[The prepared statement of Mr. Cooper follows:]

Alika Kailianu C. Cooper
163 Kaiulani Str.
Hilo, HI 96720

April 22, 1984

SUBJECT: The Native Hawaiian Study Commission Hearing
from Monday, April 16, to Friday, April 20, 1984

Please include my testimony in your report.

My name is Alika Kailianu C. Cooper, who resides in Hilo on the island of Hawaii.

The Hawaiian Study Report is bias, slanted, and untrue. The make-up of the committee had only three part-Hawaiian on it, the balance were arrogant, white, bureaucrats with very little background of what transpired in Hawaii. It is obvious they supported a political decision that was passed on by the Administration.

We did not need this study, it is a fact, in the records of Congress, it was a historical injustice to Hawaii and all Hawaiians who are living, who have past, and who will be born in the future. An injustice America and Americans have never paid for.

Do you know that we are the only Native Americans who have never had a settlement with Congress and the United States. The American Indian and the Alaskans have and will continue to get settlements, but the Hawaiians never had any consideration by the U.S. This has caused irreputable harm to our people economically, physically, mentally, and socially. This issue is really a Human Rights Issue, that must be addressed by Congress and the United States of America, for they literally overthrew our Hawaiian Kingdom, there is no question about what took place, it is all documented in Congress.

I would like to tell you the story of what transpired. We must start with the arrival of Capt. James Cook in 1778, who acknowledged the Hawaii nation as a superior nation, well cared for, well run, very efficient, and cleanliness superior to even their country of England. Cook was an ugly, sick British captain who got killed for his arrogant actions. The main point he, along with Capt. Vancouver and other English captains respected the Hawaiian nation and archipelago at the highest level. In 1794, the Hawaiian Islands were recognized as a nation by England, China, and most of the world countries. America had a plot to overthrow the Hawaiian nation, either by friendship, force, or buying the Hawaiian Islands.

From the time of the ninth President of America, William Henry Harrison in the 1840's, a plot to take over the Hawaiian nation was in full effect. The reason America now had two different oceans to protect, and Hawaii was the stepping stone to control America's front. President Tyler, the tenth president continued this effort.

During the reign of Kamehameha III to Liliuokalani, many attempts were made to buy our archipelago by America. Finally, America could not wait any longer, the friendship method did not work, so we were overthrown during Queen Liliuokalani's reign in 1893. Many treaties with America have been broken- America just ignored them.

Stevens was the instigator along with Americans and annexationists. Stevens was a GINGO , the Minister and Ambassador representing America. Stevens was well trained in military affairs who took over Paraguay with U.S. troops. Later he was the Ambassador of Sweden. The Swedes literally threw him out of their country.

In 1889 he was sent to Hawaii, where he immediately continued plotting to overthrow the Hawaiian nation. He did exactly as he did in Paraguay, bringing in troops and taking over our Hawaiian Kingdom by force.

I could go into great detail, for one of my grandfathers was the doctor for the Kingdom, an annexationist, my other grandfather was a farmer and businessman who was locked up in jail with George Lycurgus, Wilcox, and hundreds of the Queen's people. One grandfather locked the other grandfather up. I have diaries from this era by my annexationist grandfather who really believed they were doing right. Both grandfathers told me in detail many times what transpired, neither of them very friendly to each other.

The United States 50 plus years of plotting became a reality. What happened was our nation, taken by America, was turned over to the annexationist, territory, and eventually the State of Hawaii in 1960. Our land, Kingdom, wealth, all STOLEN from us and we have never had any settlement from America.

Legality of the Hawaiian Islands from Kure to Palmyra. A syndicated group of Americans enlisted the United States to take by force, a defenseless and friendly Kingdom of Hawaii. America in 1893, obliterated the legal and human rights of my ancestors and their benevolent ruler; dethroned our Queen Liliuokalani; confined her Majesty to jail under constant guard; and established its own government.

The strategy of the imperialist throughout history has been to submit the conquered to the ways of the conqueror. First, to deny their independence and then to make them dependent. To do this, the conqueror creates the stereotype versions of the people and their way of life and finally to have the people believe they are inferior. When this is achieved, the conquered people are dependent - and now are ready to accept their place of servitude. This is a capsuled version of how and what our Hawaiian people have suffered at the hands of Americans and the annexationists and thereafter through the years up to this present date.

Let me explain about the Konohiki of the waters and oceans of Hawaii. These laws surpass any other laws or any laws written after the Konohiki, these are our aboriginal rights.

The first Konohiki ran to the outer reefs and beyond. The second Konohiki went out to the aku grounds, including all the deep sea grounds. The third Konohiki is our six oceans and divided the island kingdoms.

The seventh ocean was reclaimed by Queen Kaahumanu when she voyaged to the Leeward Islands. Although this was always the seventh ocean and Konohiki within the archipelago. Queen Kaahumanu in the early 1800's reclaimed the seventh ocean and Konohiki for the Kingdom was afraid a foreign power would claim one of the islands.

These Konohikis are valid and you should take them seriously. We are tired of a bureaucracy that doesn't respect our aboriginal rights and our laws.

Let's look at our people today. We stack unemployment, welfare. In the local jails over 80% of the prisoners are of Hawaiian descent. If this isn't revolting, I ask you, what is?

Our population is about 18% Hawaiians, yet we are not represented in 18% in the Federal government in Hawaii, we are lucky to be ½ of 1% - employed by the Federal government.

Most of our people are socially, economically, deprived, we are almost a stranger in our own country.

The Leeward Islands which the Fish and Wildlife, Dept. of the Interior, is trying to claim. These islands from Kaula to Kure are seeded lands, they belong to the Hawaiian nation. Yet there is a conspiracy with Fish and Game, Dept. of the Interior, and the National Marine Fisheries, Dept. of Commerce, to take over without any legality, these islands for a bird sanctuary. Fish and Game has a master plan, some of these people are on the Leeward Islands harassing the seals, turtles, birds, etc. Fish and Game have posted signs on all the islands that it is illegal to go on any of the islands and they are in charge. This is arrogant.

One must remember, Hawaiians lived on Nihoa, Necker ~~Weka~~, French Frigate Shoals and probably many other smaller islands. We have religious sites, house sites, etc. on Nihoa and Necker Islands. Other sites on the other Leeward Islands have been destroyed. This Leeward Island conspiracy by transit bureaucrats must be addressed, either OHA or the State of Hawaii must take a stand and evict these ugly bureaucrats. Neither Fish and Game or National Marine Fisheries has any Hawaiians in any decision making capacity, neither of them have any Hawaiians working for them.

What about the Freedom of Religion Act of 1978? What about Equal Opportunity for hiring? This is how America treats us.

What has happened to our 3.5 million acres of seeded lands, we aren't running it, we are not getting our rightful share from these lands, another unjust to the Hawaiians.

The last subject I want to touch on is the turtle issue. Five years ago, National Marine Fisheries, Dept. of Commerce, and Fish and Wildlife, Dept. of Interior, got together. These transit bureaucrats decided that turtles in Hawaii were a threatened species. They also said there is a substitute for turtle in Hawaii. No investigation was made to learn of population count, no knowledgable people were notified, and these ugly Americans stopped everyone from using turtles. Turtles can be used for subsistance in the Pacific Basin, but not for Hawaiians.

Six months ago, a five year review by National Marine Fisheries came about for I put some pressure on the subject. For four years, I have been trying to get turtles to put in our Kalahuipua'a fish ponds to control the obnoxious grass and seaweed which is in the fish ponds. This is traditional, it has always been done. No permission was given me. We want to open the turtle up for all traditional usages, which include subsistance, religious usages, medicine, cleaning of fish ponds, etc. For Hawaiians, only Hawaiians.

My last correspondence with National Marine Fisheries in January was never answered, I asked them for 30 to 40 turtles to clean some fish ponds that have been overgrown for forty years or more on Hawaiian Homes Land.

The turtle population is thriving in Hawaii, we have more turtles than I have seen for years, and yet all we get is shuffling papers with these transit bureaucrats.

A precedent has been set with other native Americans - they can kill to eat seals, whales, etc. The rest of the Pacific can catch turtles for subsistence, are we different?

The above should be addressed and avenues to settle the issues done soon. The seeded land must be returned, the Konohikis of the oceans must be respected for mining rights of the ocean are talked about and will be a reality soon. The aboriginal rights which we haven't lost a case in court, must be addressed. All the above and more has come about because of the overthrow of our Hawaiian nation and must be addressed.

I hope you bureaucrats will be fair with us, for we have suffered ever since America took by force our nation, we have suffered economically, socially, physically, and mentally, and in every way you can think of.

I want to thank our Congressional people and the people in Congress for helping us.

Aloha A Nui Loa Kakou,
Alika
Alika Kailianu C. Cooper

STATEMENT OF IRIS NALEIALOHA NAPAEPAE

Ms. **Napaepae**. Aloha kakahiaka, E ho'okipa mai i ke Kona. O Kona Kai Opua, i ka la'i.

Good morning. Welcome to Kona, Kona with her puffy clouds on the horizon and of the tranquil sea.

My name is Iris Naleialoha Napaepae, president of Kahua Na'au A'o ma Pu'uhonua o Honaunau National Historical Park, Inc. This morning I am introducing you to this 2½-year-old organization.

Sharing environmental awareness began 10 years ago with three present officers of the organization, who at the time were employees of Pu'ukohola Heiau National Historical Site in Kawaihae. Environmental awareness is very much part of the National Park Service story, thus giving this opportunity to these three persons.

Workshops began at Pu'ukohola Heiau National Historical Site, and also held at Pu'uhonua o Honaunau National Historical Park, and Hawaii Volcanoes National Park. Groups participating in these workshops were elementary and high school students, summer programs, Hawaii State park employees, and the Youth Conservation Corps.

Of the three founders of the organization, Benjamin Saldua is now a permanent park technician at Pu'ukohola Heiau National Historic Site. Herman Puou Kunewa decided to further his education and at present is a senior at the University of Hawaii at Manoa majoring in recreation. Upon completion of my 9-month session at Pu'ukohola Heiau I then worked as a park technician at Pu'uhonua o Honaunau. Following the season at Pu'uhonua o Honaunau, I was employed as a work coordinator until 1981 for the Young Adult Conservation Corps.

As a team, we continued to have environmental awareness workshops as employees and on a voluntary basis. A unanimous decision was made in September 1981 to formally organize. Bylaws were compiled and application for the State of Hawaii articles of incorporation were sent to the State of Hawaii Department of Commerce and Consumer Affairs. The articles of incorporation were approved November 2, 1981, thus becoming Kahua Na'au A'o ma Pu'uhonua o Honaunau.

On September 13, 1982, a cooperative agreement between the U.S. Department of the Interior and Kahua Na'au A'o ma Pu'uhonua o Honaunau was signed. The application for nonprofit status and tax exemption with the Internal Revenue Service was submitted in December 1983 and the organization is awaiting final approval.

The organization has kept busy with 1-day workshops that are 6 to 8 hours long, overnight workshops and weeklong workshops. In January 1983, Kahua Na'au A'o ma Pu'uhonua o Honaunau experienced her first Elderhostel that was entitled Nana I Ke Kumu, Look to the source. Elderhostel is channeled through the College of Continuing Education and Community Service at the University of Hawaii at Hilo, on the island of Hawaii. The nonprofit organization Elderhostel is based in Boston, MA. Elderhostel provides a national, international university and/or college study programs for Americans 60 years and older. The tuition, room and board are minimal. Each participant is responsible for their own travel cost.

Since the first experience with Elderhostel was rewarding, Kahua Na'au A'o decided to do another in March 1983, and we've just completed another in March 1984 and we're expecting the upcoming workshop in May 1984.

In 1982 and 1983 we've conducted open to the public workshops and individual group workshops. All workshops have a tuition fee, and/or room and board fee also, or they are free to the public and sponsored by another organization such as the Kona Art Center or a business. Kahua Na'au A'o ma Pu'uhonua o Honaunau has workshops available to pre-school age groups through our kupuna or senior citizens.

The purposes of Kahua Na'au A'o ma Pu'uhonua o Honaunau are:

To teach environmental awareness as practiced by traditional Hawaiian methods of resource management and artistic expression, through study programs conducted by Kahua Na'au A'o ma Pu'uhonua o Honaunau at Pu'uhonua o Honaunau National Historic Park or other areas designated by the organization.

Second, to keep the idea of preservation and authenticity uppermost in our minds and in the minds of the students, through study programs conducted by Kahua Na'au A'o ma Pu'uhonua o Honaunau.

The reason why I have come here today to ask you to listen to what we've had to say is because Kahua is one of the major organizations that do exist in Hawaii, and that we do have a staff of Kahua of people who are not only native Hawaiians, but they are from different parts of Kona, they were born and raised here, and they know the many facets of what it is to be a Hawaiian. And that where education is the focal point, it is very hard, and many of us as Hawaiians have experienced prejudice in the educational system; we have not been able to cope many times with the changes that are now or have been taking place for a long time. And so we ask you to please consider some sort of reparations for what has happened to the Hawaiian people, and to funnel it into educational programs such as what we have created in Kahua Na'au A'o or other organizations that are concerned very much with the beauty of the culture, and the importance for the young people of Hawaii.

This keawe or lauhala fan is a product of my great-grand-aunt. But as its tradition keeps with us today, in the purpose of Kahua, the simplicity of this keawe or this lauhala fan is taught in some of our workshops. So if we stick to the simplicity and beauty of our culture, and our traditions, and we together and the people work to strive to better ourselves, then I would like to leave you with the motto of our organization:

E hana mua a pa'a ke kahua, mamua o ke a'o ana ia ha'i. Work first to make firm the foundation before teaching others.

Mahalo a nui loa ame kealoha pumehana.

Aloha.

[Material submitted by Ms. Napaepae follows:]

BY-LAWS

OF

KAHUA NA'AU A'O MA PU'UHONUA O HŌNAUNAU NHP, INC.

ARTICLE I

PURPOSES

To teach Environmental Awareness as practiced by traditional Hawaiian methods of resource management and artistic expression, through study programs conducted by Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP, INC. at Pu'uhonua o Honaunau NHP, or other areas designated by Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP, INC.

To keep the idea of preservation and authenticity uppermost in our minds and in the minds of the students, through study programs conducted by Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP INC.

ARTICLE II

OFFICES

The principal office of the corporation in the State of Hawai'i shall be located at Pu'uhonua o Honaunau NHP, South Kona, County of Hawai'i, State of Hawai'i. The corporation may conduct business of the corporation at other locations in the State of Hawai'i as may be required from time to time.

ARTICLE III

MEMBERSHIP AND DUES

3-1 Divisions of membership. There shall be such divisions of members, voting and non-voting as shall be determined by the Board of Directors.

a. The voting division of members shall include any member who pays annual dues of $5.00.

b. The non-voting division of members shall include any member who pays annual dues of $3.00.

c. The Board of Directors may grant honorary membership to persons who have rendered outstanding service to the corporation or in aid of its purposes. Such honorary members shall pay no dues and have no voting rights.

d. Dues of each division of members shall be as determined by the Board of Directors.

e. The Board reserves the right to deny application for membership at its discretion.

3-2 Notice of Meeting. Notice of the following meeting shall be made before adjournment of each meeting, and shall include the location, date and time of the following meeting.

3-3 Voting. Voting division members may vote upon issues coming before any meeting and must vote in person, not by proxy.

ARTICLE IV

DIRECTORS

4-1 Genral Powers. The business and affairs of the corporatiion shall be managed by its Board of Directors.

4-2 Number, Tenure and Qualifications. The number of the Directors of the corporation shall be 7 and they shall serve a term of 5 years as determined at the annual membership meeting. The Park Superintendent of Pu'uhonua o Hōnaunau NHP and one other employee of Pu'uhonua o Hōnaunau NHP, shall be members of the Board of Directors. All other Directors must be members of the corporation. Board of Director members may be re-elected.

4-3 Chairman of the Board of Directors. The Chairman shall take office at the close of the annual Board meeting which shall be held immediately following the annual membership meetiing, and shall serve through the annual meetings of the election period. The Chairman may be re-elected to this position, but may serve no more than three consecutive terms. If the position of the Chairman of the Board becomes vacant, the Secretary shall appoint a temporary Chairman from the membership of the Board. A record of this appointment shall be prepared and filed with the minutes. At the next meeting of the Board of Directors a temporary Chairman may be confirmed or another member elected to the office.

4-4 Secretary. The Board of Directors shall direct the activities of the corporation through the Secretary. Such direction shall be in conformity with the Articles of Incorporation, with the guideline established by the National Park Service and in accordance with the co-operate agreement with Pu'uhonua o Hōnaunau NHP.

4-5 Vacancies. Vacancies in the membership of the Board of Directors shall be filled at the hext meeting of the Board. Nominations may be made by members of the Board from the membership roster. At the next annual meeting of the Board of Directors such temporary Director may be confirmed or another member elected to this office for the coming term.

4-6 Removal. Any person holding office as a Director may be removed there from:

1) service upon him or her of a written instrument of removal signed by all other Directors.
2) for good cause by a vote of 2/3 of all other Directors. Written proof of such action shall be filed with the Secretary and certified in the minutes.

4-7 Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this BY-LAW, immediately following the annual membership meeting. The Board of Directors may provide, by resolution, a time and place within the County of Hawai'i, for the holding of additional regular meetings without other notice than such resolution.

4-8 Special Meetings. Special meetings of the Board of Directors may be called by written request of the President, or by written request signed by any 2 or more Directors. The time and date shall be no less than 5 days after the request is received by the Secretary and the place shall be as specified by the Secretary at the time of delivering notice of the requested meeting.

4-9 Quorum. 4 Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than 4 are present at a meeting, a majority of the Directors present may adjourn the meeting without further notice.

4-10 Presumption of Assent. A Director of the corporation who is present at a meeting of the Board of Directors at which action taken unless their dissent is noted in the minutes of the meeting or unless written dissent is filed with the Secretary before the adjournment of the meeting or by registered mail to the Secretary immediately after the adjournment of the meeting.

ARTICLE V

OFFICERS

5-1 Officers. The officers of the corporation shall be a President, 1 or 2 Vice Presidents, a Secretary and a Treasurer. The office of Secretary and Treasurer may be held by one and the same person.

5-2 Election and Term of Office. The officers of the corporation shall be elected every 5 years by the Board of Directors held immediately after the annual membership meeting. They shall assume their official duties before the close of the annual meeting and shall serve a term of 5 years. Officers may be re-elected.

5-3 Power and Duty of the President. The President shall preside at all meetings of the Board of Directors and at all meetings of the members. Duties shall be the same as those delegated to the Chairman of the Board of Directors by ARTICLE 4-3 hereof. Together with other officers of the corporation, he or she may sign all checks, contracts or other obligations in the name of the corporation and as may be authorized by the Board of Directors.

5-4 Power and Duty of the Vice President. The Senior Vice-President in the absence or disability of the President, shall act in his or her place and stead.

5-5 Power and Duty of the Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and of all meetings of members. The Secretary shall attend to the giving and serving of all notices of the corporation. The Secretary may sign with the President or other officer and in the name of the corporation all contracts authorized by the Board of Directors, and when necessary he or she shall affix the seal of the corporation thereto. He or she shall have charge of all books and papers of the corporation except as the Board of Directors mey direct, all of which shall be at reasonable times open to the examination of any Director.

5-6 Power and Duty of the Treasurer. The Treasurer shall have custody of all the funds and securities of the corporation which may come into his or her possession. The Treasurer shall keep membership records in good order and shall provide an accurate roster, furnishing corrections and additions as required. The Treasurer shall maintain all records so as to comply with all National Park Service Directives and all requirements of Federal and Hawai'i laws and regulations. The Treasurer may prepare the checks as authorized by the Secretary. All checks shall be signed by the Treasurer, the President and another officer.

ARTICLE VI

EXPENDITURES AND FUNDS.

6-1 **Expenditures.** Expenditures for any purpose must be approved by the Board of Directors and be duly recorded.

6-2 Surplus Funds. Surplus Funds shall be kept in the corporate savings account.

ARTICLE VII

CHECKS AND DEPOSITS.

7-1 Checks, Drafts, Etc. All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by the Treasurer, the President and another officer of the corporation in such manner as shall be determined by resolution of the Board of Directors.

7-2 Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select. All funds received by the corporation shall be accounted for and recorded.

ARTICLE VIII

AUDIT

The books shall be audited annually by a qualified public accountant. Certification of the audit shall be made by the auditor as to his or her findings and this certificate and report shall be filed with the annual report of the Treasurer. A copy of the audit shall be provided for the Park Superintendent. Auditors from the National Park

Service or from the general accounting office may audit the corporations books at any time.

ARTICLE IX

REVIEW

The National Park Service shall periodically review the benefit accuring to the National Park Service by reason of its cooperation with the corporation. If the corporation is not in agreement with the co-operative agreement, the Park may withdraw support from the corporation.

ARTICLE X

FISCAL YEAR

The Fiscal Year of the corporation shall be from October 1 through the following September 30.

ARTICLE XI

OUT-GOING OFFICERS

All out-going officers shall deliver to their successors all official material and records of the corporation not later than 10 days following the placement of the successors.

ARTICLE XII

SEAL AND MOTTO

The Board of Directors are authorized to adapt an appropriate seal for the corporation.

The motto of the corporation is:
E HANA MUA A PA'A KE KAHUA, MAMUA O KE A'O ANA IA HA'I.
Work first to make firm the foundation before teaching others.

ARTICLE XIII

AMENDMENTS

The By-Laws may be adopted, amended or repealed at a meeting of the corporation by a majority vote of the voting members present.

ARTICLE XIV

DISSOLUTION

In the event of dissolution of the corporation, all assets thereof, after the payment of all debts and obligations, shall be disposed of as provided in the Restated Articles of Incorporation. The choice or the recipients of such assets shall be charitable organizations as determined by the Board of Directors. The majority shall rule, and the decision of the Board shall be final.

Aloha mai,

We are happy to know that you are interested in Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP, INC. The organization is designed to do the following:

1) To teach Environmental Awareness as practiced by traditional Hawaiian methods of resource management and artistic expression, through study programs conducted by Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP, INC., at Pu'uhonua o Hōnaunau NHP, or other areas designated by the organization.

2) To keep the idea of preservation and authenticity uppermost in our minds and in the minds of the students, through study programs conducted by Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP, INC.

The name of the organization means the Foundation of Learning at Pu'uhonua o Hōnaunau. Pu'uhonua o Honaunau National Historical Park is located 20 miles south of Kailua, Kona, Hawaii. Most of the workshop time is spent at Hōnaunau. However 3-6 day workshops make available time to spend at other historical areas. The organization is non-profit and is in cooperative agreement with Pu'uhonua o Hōnaunau National Historical Park.

Attached is information with the cost of the workshops. There are four different workshops to select from. We require a deposit of one half the total cost four weeks before the wrkshop date. In the event that the workshop is canceled we will refund your money providing the cancellation date is two weeks before the workshop date. With the overnight(s) stay the facility will accomodate a maximum of 20 students and 2 persons of your staff. Workshops with no overnight stay may accomodate 25 to 35 students and more staff depending on the age group.

The organization suggests you make arrangements to meet the staff and see the facilities and to make your reservations far enough in advance so proper arrangements may be made. The months of January, June, July and December are not available for overnight workshops.

Aloha,

Iris Nalei Napaepae

Iris Nalei Napaepae
President

Workshop A	Workshop B
1 day without meals Includes Hawaiian food tasting	1 day with lunch Includes Hawaiian food tasting
2-5 yrs. - $7.50 each	2-5 yrs. - $8.25 each
6-13 yrs. - $8.75 each	6-13 yrs. - $9.50 each
14-18 yrs. - $10.50 each	14-18 yrs. - $11.25 each
19 yrs. and over - $11.25 each	19 yrs. and over - $12.00 each

Workshop C	Workshop D
Overnight stay without meals Includes Hawaiian food tasting	Overnight stay with 3 meals Includes Hawaiian food tasting
2-5 yrs. - $20.50 each	2-5 yrs. - $30.35 each
6-13 yrs. - $22.50 each	6-13 yrs. - $32.00 each
14-18 yrs. - $24.50 each	14-18 yrs. - $34.50 each
19 yrs. & over - $25.00 each	19 yrs. & over - $35.00 each

Transportation is not included in the above costs. The transportation arrangements must be made separately. The workshops are a minimum of 8 hours and a maximum of 7 days. Bunk beds are available and there is sleeping space for ten females with a bathroom with sinks, toilets and showers on one side and the same for ten males on the other side. Kitchen and bathroom facilities are modern. Bring your own sleeping bags or bedding and toiletries and towels.

2) Workshops at present are not held regularly by the organization. Workshops are held upon request and at the convenience of the staff who are employed elsewhere at fulltime jobs or enrolled at the University of Hawaii at Manoa. As soon as it is financially possible the organization should support fulltime staff and workshops should be held at least once a month.

The following schedule is for 1984.

• March 25-31-Elderhostel-Pu'uhonua o Hōnaunau - 20 students

• April 11- Open Workshop-Wili Lei-Kona Art Center-20 students

• May 9- Open Workshop - Coconut basket weaving-Kona Art Center 20 students

• May 20-26-Elderhostel-Pu'uhonua o Hōnaunau - 20 students

June 6-Evening Program-Pu'uhonua o Hōnaunau - Public

• June 13- Open Workshop-Making Pala'ie - Kona Art Center-20 students

• June 18- Brantley Center-Physically handicapped - Pu'ukohola Heiau NHS.

June 29,30, July 1-Cultural Festival- Pu'uhonua o Hōnaunau NHP Open to the public

• July 11-Open Workshop-Kona Art Center-20 students

• July 24-Workshop- Pu'uhonua o Honaunau-20 students

August 11,12-Cultural Festival-Pu'ukohola Heiau NHS- Open to the public

• August 18- Workshop-Pu'uhonua o Hōnaunau NHP

• September 12-Open Workshop-Kona Art Center-20 students

• September 24-Holiday workshop-Pu'ukohola Heiau NHS-20 students

• October 10-Open Workshop-Kona Art Center-20 students

• October 20-Workshop-Pu'uhonua o Hōnaunau-20 students

• November 14-Open workshop-Kona Art Center-20 students

•All workshops [illegible]
workshops that have tuition and or room and board.

United States Department of the Interior
NATIONAL PARK SERVICE
PU'UHONUA O HONAUNAU NATIONAL HISTORICAL PARK
PUUKOHOLA HEIAU NATIONAL HISTORIC SITE
HONAUNAU, KONA, HAWAII 96726

IN REPLY REFER TO:

K1815

August 29, 1983

Ms. Iris Napaepae
President
Kahua Na'au A'o ma Pu'uhonua o
Hōnaunau NHP, Inc.
P. O. Box 393
Holualoa, Hawaii 96725

Dear Iris:

Mahalo a nui loa for the great job you did in the panel discussion on August 22 for the International Park Seminar. Tom Thomas said that this was by far the best discussion we've had in the four years his groups have been here. We needed your input.

My congratulations to you and the other panel members for a job well-done, and thanks again.

Me ke aloha pumehana,

Jerry
Jerry Y. Shimoda
Superintendent

cc:
Mr. Thomas

Year of the Visitor

United States Department of the Interior

NATIONAL PARK SERVICE
PU'UHONUA O HONAUNAU NATIONAL HISTORICAL PARK
PUUKOHOLA HEIAU NATIONAL HISTORIC SITE
HONAUNAU, KONA, HAWAII [illegible]

IN REPLY REFER TO:

K3415

August 18, 1983

Aloha no:

Blossom and I would like to invite you all to our Wednesday evening program at Pu'uhonua o Hōnaunau National Historical Park.

Our guest speaker will be Iris Nalei Napaepae, the President of Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP, Inc.. She is a Kumu Hula for Halau o Kaleiho'ohie, and a former employee of Pu'uhonua o Hōnaunau National Historical Park. She and her Halau will present a performance on "Wahine Hula Ku'i mai ka wa Kahiko a o keia Ao" (The Women Dances of Ancient Times to Modern Times).

Please join us on Wednesday, September 7, 1983, at 7:30 p. m. in the park's amphitheatre.

If you have any questions, please contact our Program Coordinator, Blossom Sapp, at 328-2288.

Mahalo a nui loa.

Aloha,

Jerry

Jerry Y. Shimoda
Superintendent

Year of the Visitor

United States Department of the Interior

NATIONAL PARK SERVICE
PU'UHONUA O HONAUNAU NATIONAL HISTORICAL PARK
PUUKOHOLA HEIAU NATIONAL HISTORIC SITE
HONAUNAU, KONA, HAWAII 96726

IN REPLY REFER TO:
K1815

June 10, 1983

Ms. Iris Napaepae
Kahua Na'au A'o ma Pu'uhonua o
  Honaunau NHP, Inc.
P. O. Box 393
Holualoa, Hawaii 96725

Dear Iris:

Mahalo for agreeing to be on the panel for the International Park Seminar on Monday, August 22, 1983, in the Park amphitheatre. The meeting will be from 7:30 to 9:30 p. m.. As in past years, the subject will be "Traditional National Park Concepts and Native Hawaiian People". I'm asking each panelist to speak on the subject for five minutes and to try to stick to the subject during the exchange period that will follow.

Mr. Tom D. Thomas, Director of the International Park Seminar, will be in touch with you on this subject before August.

Mahalo again.

Aloha pumehana,

Jerry

Jerry Y. Shimoda
Superintendent

cc:
Tom D. Thomas

P.S. Elaine Edward Jim Sterling will also be on the panel.

Year of the Visitor

United States Department of the Interior

NATIONAL PARK SERVICE
PU'UHONUA O HONAUNAU NATIONAL HISTORICAL PARK
PUUKOHOLA HEIAU NATIONAL HISTORIC SITE
HONAUNAU, KONA, HAWAII 96726

IN REPLY REFER TO:

H30(WR-RCH)

January 24, 1983

Ms. Iris Napaepae
Kahaa Na'au A'o ma Pu'uhonua o
Honaunau NHP, Inc.
73-4179 Hawaii Belt Road

Dear Iris:

Enclosed is a draft of the National Park Service's Native American Relationship Policy. If you, your organization, or individual members wish to send in comments, please send them to: Chief, Office of Management Policy, Department of the Interior, 18th and C Streets, NW, Washington, D. D. 20240, by March 1, 1983.

Aloha pumehana,

Jerry

Jerry Y. Shimoda
Superintendent

Enclosure

Year of the Visitor

United States Department of the Interior
NATIONAL PARK SERVICE
PU'UHONUA O HONAUNAU NATIONAL HISTORICAL PARK
PUUKOHOLA HEIAU NATIONAL HISTORIC SITE
HONAUNAU, KONA, HAWAII 96726

IN REPLY REFER TO:

A8215

April 14, 1982

Aloha mai:

Ae, it's that time of the year. The Cultural Festival at Pu'uhonua o Hōnaunau NHP is approximately two months away. The preparations have begun for Hana, Paani, a me Ho'oulu Aina me ke Kai (Work, Play, and Living in Harmony with the Land and Sea) and will be held July 2, 3, and 4. We are again asking your kokua for 1982.

There is a slight change this year. Iris is no longer a full-time employee of the Young Adult Conservation Corps. She is the President of Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP, Inc. and is designed to conduct environmental awareness workshops at Pu'uhonua o Hōnaunau NHP and other designated areas. Iris has agreed to coordinate Ke Ali'i Ka Wā Kahiko with co-members of the organization, Herman P. Kunewa, Jr., and Benjamin Saldua. The park liaison is Katherine Domingo. The deadline for court participants is May 20, 1982. You may contact Katherine Domingo at 32802288 or Iris Napaepae at 329-6050.

Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP, Inc. is happy to offer you, the participants of Ke Ali'i Ka Wā Kahiko, a 16-hour workshop entitled Nana I Ke Kumu (Look to the Source). The workshop will begin at 6:00 p. m. Friday, June 4, and end Sunday, June 6, at 12:00 noon. We will have this workshop at Hale Na'ōpio o ka 'Āina (The House of the Children of the Land) and at Pu'uhonua o Hōnaunau NHP. Nana I Ke Kumu will focus on the importance of preservation of our natural resources, Hawaiian heritage, and why it is so important for us to contribute in whatever way possible to an event such as the annual Cultural Festival. In the past, we have held a meeting before the Cultural Festival for court participants. This year, the meeting will be included in a session of the workshop. A complete schedule of the workshop and more information will be sent to you at a later date. Space for overnight stay is limited so register early. To register, for the overnight stay at Hale Na'ōpio o ka 'Āina, please call Ben Saldua at 882-7218.

Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP, Inc. encourages you to take advantage of this workshop. The workshop is free of charge. Regularly, the organization has a tuition fee. Each participant must be a confirmed participant of Ke Ali'i Ka Wā Kahiko. To register for Nana I Ke Kumu please call Ben Saldua at 882-7218. The deadline is May 31, 1982.

Year of the Visitor

Hawaii Tribune-Herald. Wednesday, September 21, 1983—17

Mahalo letters

Cultural festival

Dear editor,

Our mahalo a nui loa to our many friends of the island community who played a big role in the success of our July 1, 2, and 3 Cultural Festival. We were overwhelmed by the warmth and generosity of the many people in the community who volunteered their time to kokua. We'd like to especially thank Iris Napaepae and Kahua Na'ao A'o ma Pu'uhonua o Honaunau NHP, Inc. for coordinating the Royal Court; Iris Napaepae and her Halau o Ka Lei Ho'ohie, Hualani Brandt and her Kaholomua Halau, and Maile Canario of Pahoa and her Halau o Maile Lau Lani; the Boy Scouts and Cub Scouts Den 1 and 2, Pack 75 and their leaders and helpers of Honaunau; our Kupuna-wahines and Kupuna-kanes; and many others that are too numerous to mention.

Again, to one and all, thank you very much.

Jerry Y. Shimoda
Superintendent

St. Benedict's church

Dear editor,

Our mahalo a nui loa to our many generous friends, relatives and organizations for helping to make our bazaar for the restoration of Saint Benedict's Church on July 16 a huge success. Our special thanks go to the various committee chairmen and their committees who worked so hard; to our good friends of St. John's Church; Walter Kahiwa; the Veterans of Foreign Wars and Bernard Mochizuki; Chico Coito; and Rodney Feltz for the beautiful roses he donated.

Henry Cho
Fund Raising Chairman
Jerry Y. Shimoda
Restoration Committee Chairman

Hawaii Tribune Herald Wednesday September 21, 1983.
Kahua Na'au [illegible]'o ma Pu'uhonua o Honaunau NHP. INC.

Basket workshop

LEINA'ALA KEAKEALANI (extreme right) recently presented a haku lei making workshop "Ka Haku Lei" at the Little Gallery in Holualoa. The next workshop scheduled in the fall series is on Wednesday, Oct. 12, "Learning to Make Coconut Baskets" to be presented by Tom Deguair. Iris Napaepae, President of Kahua Na'au A'o Ma, Pu'uhonua o Honaunau and Carol Rogers, Director of the Kona Arts Center sponsor the series of Hawaiian craft workshops. The workshops are open to the public, free of charge. Photo courtesy of Kona Arts Center.

West Hawaii Today, September, 1983.

KAHUA NA'AU A'O MA
– PU'UHONUA O
HONAUNAU NHP, INC.

Hala workshop slated in Kona

An Hawaiiana craft workshop "Ka Peahi Lauhala i Haku" (learn to make hala fans) is scheduled from 10 a.m. to 3 p.m. Wednesday at the Little Gallery in Holualoa.

The workshop is one of a series on Hawaiian crafts offered as a learning experience to teach envoronmental awareness as practiced by traditional methods of artistic expression.

The hala weaving workshop will be presented by Kehukai Perry and Keapo'okalani Mahi.

The series of workshops is sponsored by Carol Rogers, Kona Arts Center and Iris Napaepae, president of Kahua Na'au A'o Ma, Pu'uhonua o Honaunau.

The public is invited to participate in Wednesday's class, which is free.

West Hawaii Today, November 1983.

KAHUA NA'AU A'O MA
– PU'UHONUA O
HONAUNAU NHP, INC.

Hawaii Tribune Herald
August 1983

KAHUA NA'AU A'O MA
PU'UHONUA O
HONAUNAU NHP, INC.

Workshops slated at Little Gallery

A series of Hawaiian workshops are scheduled for presentation at the Little Gallery in Holualoa sponsored by the Kona Arts Center and Kahua Na‘au A‘o ma Pu‘uhonua o Honaunau.

The workshops to be held are:

Wed. Aug. 24, from 10 a.m. to 3 p.m: Carla Freitas—"Ka Hana Kapa"—Learn to make Hawaiian cloth.

Wed. Sept. 14: Leina‘Ala Keakealani—"Ka Haku Lei"—Learn to make a haku lei (bring flowers).

Wed. Oct. 12: Tom Deguair—"Ka hina‘i Lau niu i haku"—Learn to make coconut baskets.

Wed. Nov. 9: Keapo‘okalani Mahi and Kehukai Perry—Learn to make hala fans "Ka peahi lauhala i haku."

Thurs. Dec. 8: Carla Freitas—"Ka pepa wauke"—Learn to make paper with wauke.

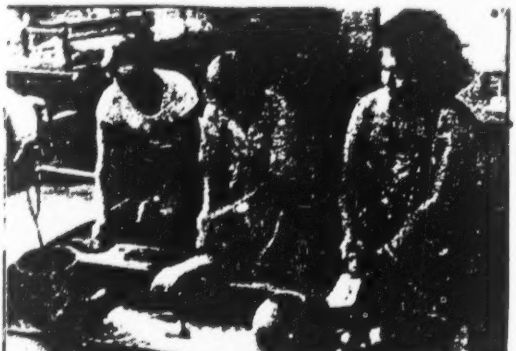
Iris Napaepae, President of Kahua Na‘au A‘o Ma, Pu‘uhonua o Honaunau and Carol Rogers of the Kona Arts Center, will sponsor the above workshops as a learning experience to teach environmental awareness as practiced by traditional Hawaiian methods of resource management and artistic expression.

The workshops are open to the public free of charge in order to keep the idea of preservation and authenticity of Hawaiian crafts throughout the series of study programs.

For information call the Kona Arts Center at 322-2307.

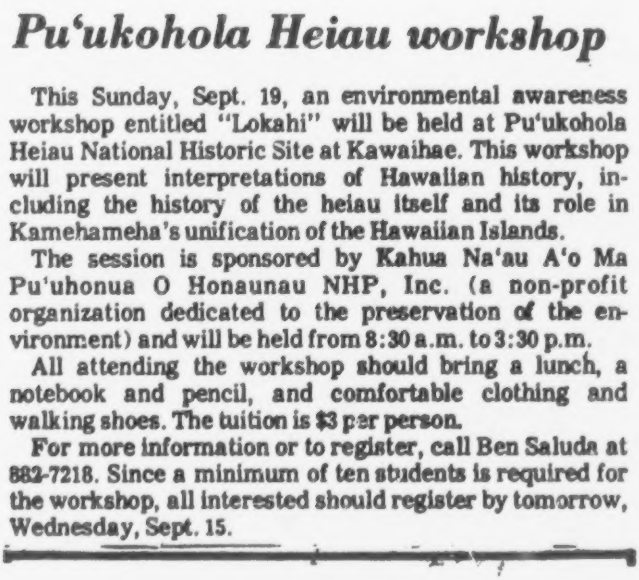
West Hawaii Today
August 1983

KAHUA NA'AU A'O MA
PU'UHONUA O
HONAUNAU NHP, INC.



Lei-making workshop

A workshop, titled "Ka Haku Lei," the making of haku leis, will be held at the Kona Arts Center Little Gallery in Holualoa on Wednesday, Sept. 14. The class will be taught by Leina‘Ala Keakealani. Participants are asked to bring flowers for lei-making. Recently, Carla Freitas presented a Hawaiian cloth making workshop, titled "Ka Hana Kapa," (shown above) Workshops are also planned for October, November and December. The workshops are sponsored by Carol Rogers of the Kona Arts Center and Iris Napaepae, President of Kahua Na‘au A‘o ma Pu‘uhonua o Honaunau. The public is invited to join the workshops free of charge. For more information call the Kona Arts Center at 322-2307



Pu'ukohola Heiau workshop

This Sunday, Sept. 19, an environmental awareness workshop entitled "Lokahi" will be held at Pu'ukohola Heiau National Historic Site at Kawaihae. This workshop will present interpretations of Hawaiian history, including the history of the heiau itself and its role in Kamehameha's unification of the Hawaiian Islands.

The session is sponsored by Kahua Na'au A'o Ma Pu'uhonua O Honaunau NHP, Inc. (a non-profit organization dedicated to the preservation of the environment) and will be held from 8:30 a.m. to 3:30 p.m.

All attending the workshop should bring a lunch, a notebook and pencil, and comfortable clothing and walking shoes. The tuition is $3 per person.

For more information or to register, call Ben Saluda at 882-7218. Since a minimum of ten students is required for the workshop, all interested should register by tomorrow, Wednesday, Sept. 15.

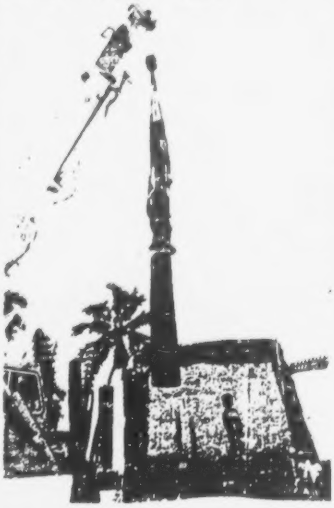
West Hawaii Today, September 1982.

KAHUA NA'AU A'O MA
PU'UHONUA O
HONAUNAU NHP, INC.

New gods blessed at Honaunau

SEVEN KI'IS (tikis) at the Pu'uhonua O Honaunau National Park in Honaunau are in the process of being replaced with newly carved images. The tall, newly carved Lono gods were blessed yesterday by Leon Sterling during a ceremony at the park. Pictured above are: (Left to Right) Head Carver Bill Puou, carver Tom DeAguiar, Leon Sterling, Andrew Kalawe and Park Superintendent Jerry Shimoda. The old tikis, one of which is being removed by a crane below, have been standing at the park for 16 years and some of the bases were beginning to rot. The new images, carved from ohia lehua wood provided by the National Park Service, are protected at their bases with a coating of a tar-like substance. The whole tiki is also protected with a wax coat. Members from the Kona Hawaiian Civic Club, the Office of Hawaiian Affairs, and the Kahua Na'au A'o ma Puuhonua O Honaunau National Historic Park Inc. were also present at yesterday's ceremony. —WHT Photo by Bob Fewell.

KI'I CARVERS include two employees of the Pu'uhonua O Honaunau, Bill Puou and Tom DeAguiar (pictured above). The men, along with Andrew Kalawe of South Kona, used hand tools such as axes, mallets and chisels, to carve the seven tikis. The carving is a skill which the men learned from Akao Grace. The sketches which the men followed in carving the images were from pictures drawn by William Ellis in 1823. Erecting the new images in their place near the heiau is Hawaiian Crane and Rigging. — WHT Photo by Bob Fewell.



West Hawaii Today, Tuesday, August 31, 1982.

KAHUA NA'AU A'O MA
PU'UHONUA O
HONAUNAU NHP, INC

A44(WR-AC)

September 13, 1982

Memorandum

To: Pacific Area Director, Pacific Area Office

From: Superintendent, Pu'uhonua o Hōnaunau NHP and Puukohola Heiau NHS

Subject: Memorandum of Agreement with Kahua Na'au A'o ma Pu'uhonua o Honaunau NHP, Inc.

In response to Mr. Lopez's memorandum of July 15 and August 31, enclosed is a revised memorandum of agreement and a completed data sheet.

(SGD) Jerry Y. Shimoda

Jerry Y. Shimoda

Enclosures

JYShimoda:skg
Iris Napaepae w/enc.

MEMORANDUM OF AGREEMENT

BETWEEN

KAHUA NA'AU A'O MA PU'UHONUA O HŌNAUNAU NHP, INC.

AND THE

NATIONAL PARK SERVICE

AGREEMENT NO.: MA 8280-82-01
DOCUMENT CONTROL NO.: LR-82-68

KAHUA NA'AU A'O MA PU'UHONUA O HŌNAUNAU NHP, INC.

By:
TITLE: President
DATE: September 13, 1982

NATIONAL PARK SERVICE

By:
TITLE: Superintendent
DATE: 9/13/82

COOPERATIVE AGREEMENT

between the

U. S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

and the

KAHUA NA'AU A'O MA PU'UHONUA O HŌNAUNAU NHP, INC.

Relative to: Providing Interpretive and Educational Programs at Pu'uhonua o Hōnaunau National Historical Park

The parties to this Agreement entered into on this 13th day of September, 1982, are the NATIONAL PARK SERVICE, UNITED STATES DEPARTMENT OF THE INTERIOR, hereinafter referred to as "NPS" and KAHUA NA'AU A'O MA PU'UHONUA O HŌNAUNAU NHP, INC., a non-profit organization hereinafter referred to as "the Foundation".

The authority for the National Park Service to enter into this agreement is found in the Act of August 25, 1916, 39 Stat. 535, 16 U.S.C. Section 1 et seq.; and Public Law 91-383, 84 Stat. 826, 16 U.S.C. Section 1a-2(g).

This Agreement is entered into by the above-named parties for the purpose of furthering the preservation of Hawaiian culture and the environment, and to mutually assist each other in carrying out this aim. The courses presented by the Foundation will revolve around the theme of Pu'uhonua o Hōnaunau National Historical Park. A modest fee will be charged the students to cover operating costs. The Foundation's program fills a need in the interpretive and educational program at Pu'uhonua o Hōnaunau National Historical Park.

1. The NPS agrees to:
   a. Permit the Foundation to use the Hale Na'ōpio o ka 'Āina dormitory at a set fee per student per night, and the park grounds to conduct its cultural courses.
   b. Assist the Foundation in presenting the courses whenever it is mutually beneficial, subject to availability of funds.
   c. Approve educational programs that further the preservation of the Hawaiian culture and environment, and are consistent with the Pu'uhonua o Hōnaunau National Historical Park theme.
   d. Conduct Multi-media First Aid training and fire extinguisher training for the Foundation staff people.
   e. Provide emergency services for the Foundation, if it determines that there is a need.

2. The Foundation agrees to:
   a. Conduct educational programs that further the preservation of the Hawaiian culture and environment that are consistent with the Pu'uhonua o Hōnaunau National Historical Park theme.
   b. No discrimination because of sex, ethnic background, or religious beliefs in its hiring practices or services.
   c. Follow all park regulations in conducting their programs, and to submit all programs for review by the park superintendent.
   d. Police its own groups and take disciplinary action against anyone who fails to comply with the provisions of this Agreement.

e. Take healthy and safety precautions during class hours, and evening hours while in the Hale Na'ōpio o ka 'Āina dormitory.

f. Have someone who has a First Aid card, CPR training card, fire extinguisher training, and water rescue training on its staff.

g. Provide its own transportation in conducting its courses.

h. Submit its tuition rates for stüdents for the approval of the park superintendent.

i. Designate the key personnel to act as liaison and meet with the designated Service representatives and Superintendent of Pu'uhonua o Hōnaunau National Historical Park.

j. Provide annual reports and other reports as may be mutually agreed to.

k. Provide liability insurance for its activities.

3. It is mutually agreed that:

a. The initiation of the interpretive and educational programs by the Foundation will benefit both parties to this Agreement.

b. Groups that come to study at Pu'uhonua o Hōnaunau National Historical park in the Foundation's program can occupy the Hale Na'ōpio o ka 'Āina.

c. This Agreement will remain in force for ten (10) years from date of signature, unless cancelled by either party upon ninety days (90) written notice to the other in the interim.

d. Officials are not to personally benefit financially from this program.

KAHUA NA'AU A'O MA PU'UHONUA O HONAUNAU NHP, INC.

Article VIII is amended to add the following paragraphs:

> "This corporation is organized exclusively for preservation of natural resources (conservation), other cultural or historical activities and or other school related activities, purposes within the meaning of Section 50 (c)(3) of the Internal Revenue Code."
>
> "Notwithstanding any other provision of these articles, the corporation shall not carry other activities not permitted to be carried on (a) by a corporation exempt from Federal Income tax under section 501 (c) (3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law)."
>
> "Upon the winding up and dissolution of this corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable, educational, religious, and or scientific purposes and which has established its tax exempt status under Section 501 (c) (3) of the Internal Revenue Code."

Amendment of Charter
Non-Profit Corporation
File in Duplicate

VALIDATION

$5 - FILING; $7.50 - Dishonored Check
Certification charge $ .10 per page-optional

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
1010 Richards Street
Mailing Address: P.O. Box 40, Honolulu, HI 96810

RECEIVED
BUSINESS REGISTRATION
DIVISION
JAN 25 11 43 AM '84
DEPARTMENT OF
COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Amendment of)
the Charter of Incorporation of)
)
)
________________________________)

CERTIFICATE OF AMENDMENT

The undersigned duly authorized officers of Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP, INC., a Hawaii non-profit corporation, do hereby certify that at a special meeting of the members of said corporation duly called and held at Pu'uhonua o Honaunau NHP, Honaunau, Kona, Hawaii, on the 12 day of December, 1983, for the purpose of amending the Charter of Incorporation, it was voted by not less than two-thirds of the members present at the meeting to amend the Charter of Incorporation of said corporation, as set forth in the exhibit attached hereto and made a part of this Certificate.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 12 day of December, 1983.

Iris N. Napaepae
Office held: President

Benjamin Saldua
Office held: Secretary, Treasurer

STATE OF HAWAII)
) ss.
County of Hawaii)

Iris Lalei Napaepae and Benjamin Saldua being first duly sworn on oath depose and say that they are the President and Secretary-Treasurer, respectively, of Kahua Na'au A'o ma Pu'uhonua o Hōnaunau NHP, INC.; that as such officers they are duly authorized to sign the foregoing Certificate of Amendment; and that they have read the said Certificate and attached Exhibit, know the contents thereof, and that the same are true.

Iris N Napaepae
Office held: President

Benjamin Saldua
Office held: Secretary-Treasurer

Subscribed and sworn to before me this
24th day of January 1984

Notary Public, State of Hawaii
My commission expires: 8/4/85

The foregoing amendment is hereby allowed this 25th day of January, 1984.

Russel S. Nagata
Acting Director of Commerce and Consumer Affairs

By ________________
Corporation and Securities Administrator

Rev. 12/82

(See reverse side for instructions)

Senator MATSUNAGA. As scheduled, we will now recess and return at 2 o'clock. There are still six other witnesses who have signed up to testify. If anybody else would like to sign up, will you please report to the desk. Be sure to leave your name and address so that we can get the committee's report to you.

The committee stands in recess until 2 o'clock this afternoon.

[Whereupon, a recess was taken until 2 o'clock.]

AFTERNOON SESSION

Senator MATSUNAGA. The committee will please come to order.

Before lunch, we had 6 witnesses left, but now we find that we have an additional 21 witnesses. We had planned on closing the hearing at 4 o'clock because we have a plane to catch to go to Maui. So what we're going to need to do is to limit your time strictly and when the red light comes on, I ask you to cooperate with us and summarize in half a minute what you have to say. We're going to have to limit you to 4 minutes, and then give you, say, half a minute to wrap up. Otherwise, I'm going to have to rap the gavel. If we don't limit time, those who have not testified by 4 o'clock will have to submit your testimony in writing for the record. In any case, if you have a written statement please submit the statement to us and we will make sure that the statement appears in the hearing record. Then you will get a copy of the hearing record with your written testimony included in it.

I'm sorry that we have to limit your time, but we had not expected this many witnesses. It's a good sign, and I truly appreciate the fact that so many are willing to testify. In the case of Honolulu yesterday, we had 75 witnesses testify, when initially we had only 39 scheduled to appear. So much of the testimony has been educational, for me at least. Sitting up here this morning and yesterday, I learned a lot just listening. I'm sure those of you in the audience who have been listening to the witnesses can so testify too, that this has been a real education.

Our first witness this afternoon will be Lei Dela Cruz. Lei, we'll be happy to hear from you. Will you go to the table with the microphone?

Ms. LEI CRUZ. Thank you.

Senator MATSUNAGA. As soon as you begin I'm going to push the button on the timer. When you see the green light you go, and when the red light comes on, there'll be a bell. If you can finish your testimony before then, then like a traffic signal, you know, you won't get any tickets.

STATEMENT OF LEI DELA CRUZ

Ms. LEI CRUZ. OK. I think I can manage.

My testimony this evening is because of the importance that I find in you being here and giving us the opportunity to express ourselves concerning the Native Hawaiian Study Commission report. Mr. Matsunaga, I don't have a written statement, so I see you have a court reporter there. And I feel that what I have to say is not going to be wasted, like I feel the first time we are at Waikea High School in Hilo, I felt like it was a waste of my time, because nothing was taken into consideration. My name wasn't put in any of this Commission study, and so I feel that this might just be my last chance to express myself. And right now I stand before you as a member of the Native Hawaiian Association who—I've been a member for almost 3½ years. And I have come from Honolulu originally, but in the 4 years that I have lived in Hilo, I've learned quite a lot just like you sitting here listening to all the witnesses taking place here—that in the 4 years, I've really come to know what the Hawaiian concerns and cultures have come to be. And it's not reparations. It's not sovereignty. It's the Department of Hawaiian Home Lands. This to me was the reparations given to us but in the form of the Department of Hawaiian Home Lands.

I found that there's a lot to say, at lot that is hidden in this issue, you see, because my own parents are beneficiaries, and so am I. I'm 75 percent native Hawaiian. And I want to make use of this, as I live upon this Earth. And this morning, as I stand here, I find that this is the issue that needs to be confronted with. The books is nice, it's got two nice volumes in there. But I feel that it doesn't really help us as native Hawaiians, where I live in Hilo. As far as what am I going to do today? What are the benefits do I have today? And the benefits are here.

The Department of Hawaiian Home Lands. It's been in effect for over 60 years. Yet, sure, we all have ups and downs, nothing is perfect. Even the Hawaiian Home Lands being in effect for 60 years, they need to iron things out too. But we already have it. And I'd like to think that as I live on this Earth, I like to think from today forward. I don't like to go back from today, and go backwards, and rehash out everything that's supposed to be pau already. It's best to start from now and go forward.

As the president of our association, Linda Dela Cruz, has much to give on this subject here, but I'd like to say that for me being on the legislative committee, I find that I, too, will be learning a lot, like you, in the issues that will be said this evening. But there is a lot to do, a lot to correct, and I feel that the Department of Hawaiian Home Lands is a major subject in itself. And we have it now, we should make it known to the native Hawaiians and let this benefit that is ours, that we can take care of, we can use it now instead of making new agencies. They created OHA to use the 5(f) section of the Admission Act, but they find that only the native Hawaiians can use a portion of this money, which you find out as other testimonies are being heard. But this is what I'd like to say, is that I'm thankful for your folks taking the time, OK.

Senator MATSUNAGA. Mahalo, Lei, mahalo.

Our next witness is Linda Dela Cruz. Linda.

Linda is from Hilo, and we appreciate your coming all the way from Hilo. I understand the weather is terrible in Hilo.

Mrs. LINDA CRUZ. Yes—all the way.

Senator MATSUNAGA. We'll be happy to hear from you.

STATEMENT OF LINDA DELA CRUZ

Mrs. LINDA CRUZ. Chairman Spark Matsunaga, members of the U.S. Senate Committee on Energy and Natural Resources, ladies and gentlemen, aloha. Thank you for the opportunity to once again testify on the Native Hawaiian Study Commission report.

My name is Mrs. Linda Dela Cruz. I live in Hilo on Hawaiian home lands in Panaewa. I am a native Hawaiian with 75-percent Hawaiian blood and I am a beneficiary of the two trusts, Hawaiian Homes Commission Act, 1920, and the 5(f) section of the Hawaii State Admission Act, 1959. I speak today on behalf of my native Hawaiian family, the members of the Native Hawaiian Association. and myself. I am also president of the Native Hawaiian Association.

A brief narrative about the Native Hawaiian Association:

This organization was created in 1982. Our members are all 50 percent or more Hawaiian blood as defined in the Hawaiian Homes Commission Act, 1920. The purpose of our organization is to work for the betterment of the conditions of native Hawaiians as defined in the 5(f) section of the Hawaii State Admission Act, 1959.

Before I present our testimony, may I humbly request that you do not pay attention to how I present this testimony and how I use the English language, because I do not have a Ph.D., a master's or a bachelor's degree. I am a homemaker trying to do my best as a native Hawaiian and president of the Native Hawaiian Association.

Senator MATSUNAGA. You're doing very well.

Mrs. LINDA CRUZ. Thank you.

The Native Hawaiians Study Commission report, volumes I and II, covers a wide range of native Hawaiian culture, needs, and concerns. In our testimony, we refer to the conclusions and recommendations in volumes I and II. The rest of the two volumes, as we understand, is information to verify what's written in the conclusions and recommendations. The information is just that—information. Whether the information is true or false is not the point for us. The point is, what happens now.

First, I want to thank the members of the Native Hawaiian Study Commission for writing this report, for taking so much of their valuable time and patience to write and research this report. Maybe we expected too much or we expected this report to solve all our problems, but to tell you the truth, we are very disappointed with this report.

The Hawaiian members of the Study Commission seem interested in only reparations, while the Washington members of the Study Commission seem only interested in hurry up and get this over with. If there is anyone interested in Hawaiian history as written in the Native Hawaiian Study Commission report, all they have to do is go to the University of Hawaii at Hilo Library and ask the librarian. If it's not at that library, the librarian can send to all the other libraries for this information.

The back of volume I are many very impressive testimonies. But where is our oral testimonies we presented at the Hilo public hearing? Everything we said at the Hilo public hearing seems to have gone down the drain. It's as though we were never there. What we said at the Hilo public hearing, was it so bad? Was it so contrary to the majority that there is no public hearing in Hilo this time around? Attached is a letter I sent to you, Senator Matsunaga, and your reply. Perhaps it is our fault why our oral testimony is not included in this report or other reports, but we're not too proud of how we write that we keep giving oral reports, and we're never included in books like the Native Hawaiians Study Commission report.

The conclusions in the Native Hawaiians Study Commission report is not all correct. If the members of the Commission had taken a little more time and did a little more homework, they would have found that, and I quote, page 23, fourth paragraph: "Native Hawaiians have followed the statewide trend in moving toward the Island of Oahu." For example: me. My parents moved to the island of Oahu. I was born and raised on the island of Oahu; 10 years ago, me and my whole family moved to Hilo. Today, my brothers, and sisters, and their whole families have moved to this island. Many more native Hawaiians have also moved. The trend today is not move to the island of Oahu, but move to outside islands. End of example.

At the public hearing in Hilo, we did say we were not there to speak about reparations. We were there to speak about the two trusts that Congress gave to us a long time ago. The Hawaiian Homes Commission Act, 1920, and the 5(f) section of the Admission Act, 1959.

For the last 10 years, we have been asking questions of reparations. To this day, we are still asking the same questions. Attached is a letter I sent to Kina'u Kamali'i and her reply. We don't want to hurt ourselves or hurt others, but we might as well say it like it is or forever hold our peace. Like everything else, there is always two sides to a story. The overthrow of the monarchy. Our side is brief and to the point.

When the marines marched from Honolulu Harbor to Iolani Palace and overthrew the monarchy, they actually freed the slaves. Who were the slaves? The maka'ainana (commoners) from the Ali'i (ruling class), and the immigrants to the sugar planters.

We keep asking over and over again, what is reparations? Who is it for? I think our problem is, we don't understand, we don't believe, and most of all we don't trust those that have been giving us the answers. Our past experience makes us very suspicious of everything.

The recommendations section in the Native Hawaiians Study Commission report is extremely ridiculous. We don't think it's funny any more. What the recommendations recommend we do, has already been done. We have been doing this for the last 91 years, since the overthrow of the monarchy in 1893. If we had been doing this for the last 91 years and it was so perfect and good, why would we have a Native Hawaiians Study Commission report today?

And that's all the time—and guess what? That's all the time I had to write it. I had much, much more that I would like to say, but I have 4 minutes. But I'm going to attach this and give to you. And can you send me back this after you make your copies? I didn't have time to go any further.

Thank you very much.

Senator **Matsunaga**. Thank you very much. And because you came from Hilo, Linda, we gave you 3 extra minutes.

Mrs. **Linda Cruz**. Thank you very much.

Senator **Matsunaga**. Our next witness is Pele Hanoa.

Oh, yes.

Mrs. KAMALI'I. I might, if I could address the Chair and clarify a few things, just as to why their testimony was not entered into the final report of the Native Hawaiians Study Commission.

In the law itself, Public Law 96-565, it was quite clear as to what our mandate was as Commissioners. All testimony that was heard with regards to the Commission itself and its hearing, we have those all on tape, but we were required by law to put in the final report only the testimony that was sent in answer to the first draft. All written testimony that came in answer to the first draft is in the final report. If you did not write the Commission on that final draft, yes, your testimony is not in the final report. But your record and all of your oral testimony is on file in the National Archives, and here in our records. So you have not gone without being heard, because we did use it, Linda, and we intend to use it in the future.

Senator MATSUNAGA. Thank you, Kina'u.

You heard from the chairperson of the Commission, so Linda, there is your answer.

Mrs. LINDA CRUZ. I don't appreciate the answer, because it's still not written in there.

Senator MATSUNAGA. I wish to announce at this time that the hearing record of this committee will remain open for 2 weeks after today. If there is anyone who wishes to submit any testimony in writing, your testimony will also appear in the record. It must be submitted to the committee in Washington within the next 2 weeks after today. And those who did testify, if you wish to correct your statement or submit a written statement in lieu of your oral statement, it will also be accepted. Please state this in your cover letter to us and we will make the necessary changes or additions for you.

Our next witness, is Pele Hanoa. We'll he happy to hear from you.

STATEMENT OF PELE HANOA, PRESIDENT, HAWAII COUNCIL

Ms. HANOA. Hon. Sparky Matsunaga, Congressman Akaka, U.S. Senate Committee on Energy and Natural Resources.

Dear Senator Matsunaga: The Hawaii Council Association of Hawaiian Civic Clubs supports the resolution in principle prepared by Kaulana Na Pua Institute, Inc., which urges the United States Government to reject enumerated sections of the final report of the Native Hawaiians Study Commission, volume I.

My board of director members: Hilo Hawaiian Civic Club, Prince David Kawananakoa Hawaiian Civic Club, Laupahoehoe Hawaiian Civic Club, Hamakua Hawaiian Civic Club, Waimea Hawaiian Civic Club, Kohala Hawaiian Civic Club, Kona Hawaiian Civic Club, Kuakini Hawaiian Civic Club, Ho'opuloa Hawaiian Civic Club, and Ka'u Hawaiian Civic Club.

"O au no, me ka 'oia 'i 'o."

Mahalo.

[The resolution follows:]

A RESOLUTION RESPECTFULLY URGING THE UNITED STATES SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES AND THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS OF THE UNITED STATES HOUSE TO FORMALLY REJECT ENUMERATED SECTIONS OF THE FINAL REPORT OF THE NATIVE HAWAIIANS STUDY COMMISSION, VOLUME I

WHEREAS, the undersigned members of the Hawaiian community hold a deep and abiding commitment to the enhancement and protection of the rights and interests of the native Hawaiian people; and

WHEREAS, this commitment can and, appropriately, should extend to an examination of all governmental documents and studies which impact on the well-being of our community and responses to their demonstrated needs; and

WHEREAS, the Final Report, dated June 23, 1983, of the Native Hawaiians Study Commission, a Congressionally-mandated inquiry (P.L. 96-565, "Title III") to "study the culture, needs, and concerns of Native Hawaiians" to provide guidance on possible federal responses in identified areas affecting the rights and interests of our citizens; and

WHEREAS, Volume I of this Final Report, contains many errors and inaccuracies which are specifically addressed in Volume II; and

WHEREAS, unless these errors and inaccuracies are refuted and formally rejected it will do harm and injustice to the people of the State of Hawai'i; and

WHEREAS, Volume II offered specific point-by-point refutation in the following areas of Volume I:

1. "Approach and Methodology," pages 1-8;
2. "Conclusions and Recommendations," pages 21-32;
3. "Ancient History to Reciprocity," pages 147-172;
4. "Land Laws and Land Relationships," pages 251-264;
5. "Diplomatic and Congressional History: From

Monarchy to Statehood," pages 265-332;
6. Existing Law, Native Hawaiians, and Compensation," pages 333-370; and
7. "Review of Hawaiian Homes Commission Programs," pages 371-418; and

WHEREAS, the undersigned members of the Hawaiian community share the concerns raised in Volume II of this report and note that Volume I contains a fundamental misinterpretation of the history of Hawai'i, misapplies American Indian law to the native Hawaiian experience, forces legal analyses which jeopardize the whole body of claims and settlement precedents and thereby denies justice to the Hawaiian people; and

WHEREAS, such errors and their use as the basis for findings, conclusions, and recommendations to the Congress of the United States of America must not be permitted to stand unchallenged and uncorrected in national records and as the source for possible future determinations of fact or action by the national government;

NOW THEREFORE, BE IT RESOLVED BY THE UNDERSIGNED MEMBERS OF THE HAWAIIAN COMMUNITY that we respectfully urge the United States Senate Committee on Energy and Natural Resources and the Committee on Interior and Insular Affairs of the United States House to formally reject those portions of the Final Report of the Native Hawaiians Study Commission, Volume I, enumerated in the body of this document, including the entirety of the conclusions and recommendations included in that volume; and

BE IT FURTHER RESOLVED BY THE UNDERSIGNED MEMBERS OF THE HAWAIIAN COMMUNITY that certified copies of this resolution be transmitted to Senator James McClure, Chairperson of the Committee on Energy and Natural Resources, Congressman Morris K. Udall, Chairperson of the Committee on Interior and Insular Affairs, Senators Spark M. Matsunaga and Daniel K. Inouye, Congressmen Cecil Heftel and Daniel Akaka, Native Hawaiians Study Commission Chairperson Kina'u Boyd Kamali'i, Office of Hawaiian Affairs Board of Trustees Chairperson Joseph Kealoha, and to the news media of Honolulu.

Senator **Matsunaga**. Thank you. Thank you very much.

The resolution submitted with your letter, Pele, will appear in full in the record.

Our next witness will be Manu Gay. Manu.

STATEMENT OF MANU GAY

Mr. **Gay**. I would like to start by saying a short pule for us, because I think that's appropriate before you mention anything else that we talk about what I'm going to say. I'm not going to speak in English. And I'm going to quote what people in 1893 said about what the events were happening, and this if from Liliuokalani's own words and the words of people that supported her. And it goes something like this.

[The witness spoke in the Hawaiian language.]

Senator **Matsunaga**. Thank you, Mr. Gay. Mr. Gay, unless you submit a translation of that in English, it will not appear in the record. The reason for this is because the people we're trying to convince are not those who are seated here, but those in Washington who don't understand Hawaiian. So it has to be in English. If people are going to read and understand what you're trying to say, you're going to have to submit a translation in English. Otherwise, it will not appear in the record. I'm sorry to say, but that's the way it is.

Thank you anyhow, Mahalo—at least they understand Mahalo. Mahalo Nui Loa.

Our next witness is Mr. Tony Dias of the Kohala Puerto Rican Social Club. Mr. Dias.

Is Tony here? No?

All right, then we'll call upon Martina Whitehead of the Napuna Waimea.

STATEMENT OF MARTINA WHITEHEAD, CHAIRMAN OF NAKU PUNA'O OF WAIMEA

Ms. **Whitehead**. Aloha. I am Martina Whitehead of Kamuela, Waimea. And I am the chairman of Naku Puna'o of Waimea. We stand 75 members strong; and I also belong to many other Hawaiian organizations throughout the islands. I am at present the treasurer of this organization, Naku Puan'o Waimea.

Senator Matsunaga, I would like to take my time and give it back to Manu, if he would give it back in English, if he will.

Mr. **Gay**. Thank you, auntie.

What I said wasn't my own words, it was part of——

Senator **Matsunaga**. I see. Well, if you wish, you see, if you submit in Hawaiian, so long as you submit it in English, also, then it will be in the record. But you have to submit it in English. Otherwise it won't be understood. This is what I'm trying to say. So, if you wish, you won't need to repeat what was said. All you need to do is submit it in English, later.

Mr. **Gay**. What I'll do, is shortcut it and tell you basically what it's about.

Senator **Matsunaga**. All right, if you will shortcut it within the remaining 3 minutes you have.

Mr. **Gay**. The first of what I said was, was the original Hawaii national anthem was not Hawaii Pono Ae. It was—the first national anthem was composed in the time of Kamehameha V by Queen Liliuokalani, and it was called the Mele Lapue Hawaii (phonetic). And that was the first part of what I spoke about. If you look in the Albert book and Naupa (phonetic) with the 101 songs, you will find an English translation in there. And so you'll understand a little bit there about what Liliuokalani herself felt about the Kingdom of Hawaii.

Then I went on to include a song that we know today as Kaulana Na Pua, but it was originally known as Mele Au Pa'aina (phonetic), andl it spoke about how the Royal Hawaiian Band went on strike when the provisional government took over, and they composed this song in support of the monarchy, and advising the Hawaiian people what to do. And the provisional government was going to—the American Government was going to send an emissary to sign on behalf of the Hawaiian people, to sign their name to a document saying that they do not support the Hawaiian Kingdom. And so they taught the Hawaiian people this song that we know as Kaulana Na Pua, and they sang this song as a rallying song. And what they said is, they told the American Government, we ain't going to sign this document of annexation. And they didn't. And we're not satisfied with money. We don't care how much you offer us. What we want is our land. And we won't be satisfied with anything else. And we want the queen to be restored to her throne. And they stuck to that.

The second part began with the song that we call our State anthem, Hawaii Pono Ae, which is very inappropriate for the State to use today. Because that song was composed for the Hawaiian monarchy, and if you understand what the Hawaiian words are saying, it says that the Hawaiian monarchy will defend itself with spear and shield. Not the American Government. The song Hawaii Pono Ae was written for defense of the Hawaiian Government.

Another part of it was a saying that Kamehameha himself said when he was in battle on Maui. It talked about not retreating, but always to look forward. And that the times ahead weren't going to be good times. They were going to be bad times, and the water was going to taste very bitter. And those things have come to pass and are true.

The last part of the statement came from a church song, and the Hawaiian people are saying that there's three most important things in the world to have. And that's faith, hope, and not to forget that they have aloha. And the last part of the speech was the song that Liliuokalani wrote while she was in prison in 1895, and she was giving advice to Princess Kaiulani, who was in Washington at that time. And they treated her very bad. And the Queen told them not to hate them, but to forgive them for what they did, and try to work things out from then on. And I left it off just with what she said to Princess Kaiulani, because I thought it was good advice for us. Not to look always to the bad things that are going on. And look for the good things, because everything will work out all right, no matter what happens.

Senator **Matsunaga**. Thank you. Thank you very much.

Our next witness is Gordon Leslie. Gordon, we'll be happy to hear from you. Gordon represents the South Kona Association.

STATEMENT OF GORDON LESLIE, SOUTH KONA ASSOCIATION

Mr. **Leslie**. Thank you, Senator, and aloha.

Senator Matsunaga and I have shared many correspondence in the last few years, and he has been quite successful in our accomplishments in the South Kona district. Even in accomplishments on the Hilo side.

Senator, I'm very disappointed that Senator Inouye was unable to make this afternoon's meeting. I'm also very sorry that the time allocated for the witnesses are so limited. The sequence of events that happened in the period of the overthrow of our Queen, Her Majesty Liliuokalani cannot possibly be compiled in 4 minutes. So I'd like to direct my energy at this time to the sequence of the responsibility of our Government today, the United States.

At the time that Congress had made a law to establish this nine-member Commission to study the culture, needs, and concerns of the native Hawaiian people, they also made a law at the same time that out of the nine Commissioners, there would be only three from the State of Hawaii. The other six would have to be from some mainland States. Already people—that was stacking it a bit. Already we lost at that time. We were only guaranteed three votes in this decisionmaking body.

Second, out of the nine Commissioners—of the six mainland Commissioners' attendance during the first 9 months of the review of the Hawaiian study and the public hearings that were held here, two of the Commissioners from the mainland had never made any one of these public hearings in the State of Hawaii. Something is wrong there.

Can everybody back there hear me?

Therefore, I don't see how a majority of six will be able to make a decision that is so important to the Hawaiian nation, when two of its members did not come to Hawaii for any of the public hearings and therefore would not have been able to feel the mana'o and the mana of the people that are concerned over our reparations.

Also, last June 16 or thereabouts, Senator, I drafted a letter to the President of the United States. I drafted a letter to the chairman of the Commission, Kina'u Kamali'i, and copies to yourself. And also a letter to the Chief Justice of the Supreme Court, filing a temporary restraining order against the Congress and the President of the United States on their decision for reparations. When they set the rules for this Commission, it was understood that when the Commissioners submitted their mana'o or their votes to the President of the United States and Congress for their final decision, the President and Congress had only 60 days to review and make a final decision. I felt that that was not enough time for any Government body to make a decision for something that was so important. And also on the findings of the majority.

So, I don't know what action or what happened with those letters and those testimonies but I was glad to see that the President and Congress have extended this decision for a whole year and this is why we're here now, I presume.

Also, Senator Matsunaga, when you get back to the mainland, I would like to share this. As far as the overthrow was concerned in 1893 that I understand, the representative of the United States, he was Mr. Stevens. Mr. Stevens was given instructions by President Cleveland whom, with his wife, were very good friends of Her Majesty Liliuokalani, and he was instructed to leave the Hawaiian monarch alone—not to interfere with the Hawaiian Government. Mr. Stevens, along with other members, one to be Mr. Wilcox, ignored their instructions from the President, invited Captain Willis from the U.S.S. *Boston*, the largest battleship in the United States at that time, to enter Honolulu Harbor in violation of international law. No country is allowed to bring their battleships into another country without the permission or invitation of the ruling government. Stevens was not the queen or the ruler of the government at the time, but he invited the U.S.S. *Boston* into Honolulu Harbor, which is in violation of international law, removed 200 marines, went up and took 6 of the Queen's closest aides as hostages, another violation. The study says President Cleveland did not execute the order to do this. The United States is blameless. I say, you get a military person or member of anyone defending the United States, with their uniform and gun, and let that person go out and terrorize a community and shoot people. Families of that person are allowed to sue the agency that that person represents, which would be maybe, say, for instance, the police department, or Marine Corps, or Army, because Stevens was a direct representative of the United States. I feel that, he is responsible to the United States and the reason I say he is responsible to them, besides that, even after the fact that this all happened, President Cleveland did not make a wrong right. He did not come in and say: "Stevens, you did wrong, you're out. We'll give the monarchy back their rulership." Like the mining in Nicaragua, with those illegal minings, I think the United States is responsible to the Hawaiian nation.

Thank you all for listening.

Senator MATSUNAGA. The next witness is Kinih Pea.

STATEMENT OF KINIH PEA

Mr. PEA. Good afternoon, Chairman Matsunaga and Representative Akaka. Aloha.

My concern is not particularly about reparations, but why we of east Hawaii weren't given a chance for a hearing. Can you answer me that?

Senator MATSUNAGA. You're from Hilo, aren't you?

Mr. PEA. Puna, Kalapana.

Senator MATSUNAGA. We've been holding hearings in Hilo, and the people of Kona felt neglected. We have received statements from the people of Kona not to forget Kona. They asked us to hold hearings in Kona once in a while. So we said, OK, here we come, Kona. As it turns out this was a good idea because the weather is so bad in Hilo today. It is so bad that the mayor couldn't fly his helicopter. In a way, I'm really happy to be in Kona, because you have such beautiful weather here.

Mr. PEA. Mahalo, Senator. Well, that's true. But let me remind the audience, we have 48,000 Hawaiians, by count, in the east

Hawaii area; 16,000 in west Hawaii. That gives us the edge, quite a bit.

I represent organizations in the Puna area—Kalapana Community Organization, and the Puna Hui Ohana. We work with culture things, and we feel that reparations is forthcoming. We need it for our youngsters in the future, because we have been talking about changing of the blood quantum. But I regret, I learned something today from my fellow members here, that we'll hold it for a while. I think Representative Akaka has mentioned it to me, I see why. Earlier. But, I say this much I thank Kina'u and Mrs. Beamer, Solomon, for being able to be part of our Commission. We of Puna do look to those two people as our mainstay, and to you two, and of course, Senator Inouye, for your help.

Mahalo.

Senator MATSUNAGA. Mahalo.

Our next witness is Louis Kahanamoku. Louis, we'll be happy to hear from you.

STATEMENT OF LOUIS KAHANAMOKU

Mr. KAHANAMOKU. Aloha, Sparky, Congressman Akaka, I'm very proud to have you aboard. I got a call on the telephone only a couple hours ago to be here today, from Louisa Rice who has come a long ways. She's done a lot of fighting, been up in Washington. I served as the president of the Aloha Association at the time for the big island. She would like to convey the message that the Study Commission—she does not accept it—and I concur, go along with her, as a result of this letter, that news article by Mrs. Kamali'i, we concur with that also. Go along with everything that is in this paper, and Mrs. Kamali'i, from the bottom of our hearts; and folks, I hope when you go back that I think we're at the end of this, coming to Hawaii as a jaunt. Everybody wants to come to Hawaii. And I hope this is the last trip, all right. I think you have all of these trips, and that should be presented there in Washington. There's no coming back, and I feel that everything that is needed for us here in Hawaii has been over and over again. I sat here this morning; I'm not going to elaborate on anything that happened in the past. This is history. Now we all going to look ahead, look forward, in the future, good for all our children and everyone here in Hawaii, and throughout the whole country, this, I believe, should be broadcast. I hope to see it on a superstation like Arizona, and that's coming across here every day. Those big stations cover all the news throughout the country.

Mahalo, and thank you very much.

Senator MATSUNAGA. Thank you very much.

Our next witness is Lilly A. Ahia. Lilly.

STATEMENT OF LILLY A. AHIA

Mrs. AHIA. Senator Spark Matsunaga, Senator Daniel Inouye, U.S. Representative Akaka, aloha.

I'm Mrs. Lilly Ahia, a representative of Ka Ohana O Kalae. Ka Ohana O Kalae is a grassroots organization in Kau which is dedicated to the preservation of the Hawaiian race and culture. We humbly ask that volume II of the Native Hawaiians Study Commission be substantially supported. Volume II dissents from the Federal-State task force report—volume I, which we believe to be totally inadequate.

The need for creative legislation which can implement the recommendations of volume II of the native Hawaiians study is glaringly apparent. We need to encourage legislative change since the past has brought disaster to the Hawaiian people. Positive, honest change requires returning the Hawaiians to the land, making sure the State honors its trust obligations, and providing more educational needs for the Hawaiians.

We believe volume II of the Native Hawaiians Study Commission to be a courageous and well-thoughtout work. Its significance will be especially great if it can be implemented and increased. Please activate volume II of the Native Hawaiians Study Commission, so that Hawaiians can continue to live in Hawaii.

We would like to add that the legislators sincerely protect the 50 percent qualifying Hawaiians, so that those who have applied for land be guaranteed land first, before any blood quantum is changed.

Those of you here of Hawaiian ancestry, be steadfast for the land.

Mahalo Nui Loa.

Senator MATSUNAGA. Mahalo.

Our next witness is Margaret Jung.

STATEMENT OF MARGARET JUNG

Ms. JUNG. Chairperson and fellow people, aloha.

I am of half-Hawaiian extraction, and German extraction. My father was Mr. Justice Pei (phonetic), a politician in his day, when I was a little child. And my mother was Maggie Kama (phonetic), she was educated as far as the fifth grade, but she became a teacher because my father had to be a principal of the Kalapana school, and my mother was for the lower grades.

I was born in Kalapana, but I was raised in Hilo. So I attended the Hilo Union School and Hilo Intermediate, and I got disgusted with school, so I went to the books. And that's where I got my experience. And talking in a way from my dear knowledge, I would like to express that, in a way, we should be thankful that we are under the American flag, because if we're under other flags, I don't think we'd have it as nice as this now. Although in some ways we should have the benefits like the American Indians and the Alaskans who have asked for benefits, we should have the same benefits given to us. But I can say, thank God we're still under the American flag.

Respectfully yours, Margaret Jung, Pahoa, HI.

Senator MATSUNAGA. Thank you; thank you very much, Margaret.

Our next witness is Peter Vanderpoel.

STATEMENT OF PETER VANDERPOEL

Mr. VANDERPOEL. Ladies and gentlemen, Members of Congress, members of the Commission.

I represent the Ohana O Kaumualii as their elected president. This is a family of Hawaiian descent with approximately 500 members. I also represent my children, which are 50 percent Hawaiian and whose heritage is at stake.

There are many countries who create the records of history after the facts. The reasons can be numerous—for instance, pure chauvinistic reasons such as building up the national pride or image building for the international community. For reasons of long-term economic or political gain, or for the purposes of deliberately covering up a moral blemish on the nation's facts. I'm not here to argue these facts surrounding the overthrow of the Hawaiian monarchy or the annexation of Hawaii by the United States. I'm here to address the implications and the reasons behind the conclusions reached by the majority report of the Commission.

The majority report of the Commission is suspect in its conclusions, and it fails to address cause and effect. It fails to place responsibility where it lies. Both the majority and minority reports are a virtual horror story of how a proud and sovereign race lost its identity, its sovereignty and its land. But after reading the conclusions of the majority report, it appears that the Commission's intention was to shove a pacifier in the face of the Hawaiians by merely recommending to address social ills—the social ills of the Hawaiians, instead of addressing the roots and causes of their plight.

To make an entire race a ward of the state by merely extending a social umbrella over the head is typical of a rigid mentality. Failing to accept responsibility for the loss of the Hawaiian sovereignty, and subsequently the loss of identity, is passing the buck in the order of the first magnitude.

It appears that the conclusion is a mere justification of the actions of the U.S. Government based on the prevailing attitudes at the time of the turn of the century. However, you're not any longer dealing with a foreign country whose territory has important economic, strategic, and political values. You're not dealing with a foreign populace whose social structure and religious beliefs were contrary to the prevailing morality of the Western Powers of the 19th century. You're dealing with American citizens who as a social group demand the right to their identity, their history, and their culture. The conclusions reached in Washington are so contrary to the facts and so fake, as to its justifications, that they revive the skeletons of the rigid mentality to which the Hawaiian race has been subject throughout its written history.

Today's generation demands answers in the quest for identity—their inalienable right to the truth cannot be taken away. For 150 years, up to statehood, the Hawaiian culture and some of their identity has survived through the strong bonds of the Ohana, out of necessity to counter foreign influences, and exterior attacks on the social structure.

The Hawaiians of today demand a full accounting of the U.S. Government's role during the overthrow of the monarchy, and a full accounting of the reasons of the conclusions reached by the Commission. As today's older generation passes on, and voices of moderation become softer, the younger generation might have no choice but to seek their rights in a more active manner.

The conclusion reached by the Commission has been a slap in the face of the Hawaiian people, and the first step toward undoing this gross injustice is to reverse the decision and to give a full accounting of why this happened in the first place.

If the majority report is allowed to stand, I foresee increased social ills, and combined with a lot more action and less readiness to talk by the younger generation of today.

The majority Commission's conclusions are not based on law, but absence of law. They are not based on morality, but absence of morality. And subsequently, I have the distinct impression that there has been a deliberate attempt to absolve the U.S. Government of any responsibility contrary to the purpose of why the Commission was convened in the first place.

Thank you.

Senator **Matsunaga**. Thank you very much, Mr. Vanderpoel.

Our next witness is Lionel Kutner.

STATEMENT OF LIONEL KUTNER

Mr. **Kutner**. Chairman Matsunaga, Congressman Akaka, thank you very much for coming this afternoon, and giving us this opportunity for public input.

I'm not Hawaiian, not 1 percent Hawaiian blood, and I find it very significant that we have the opportunity to contribute. I have very simple contribution to make. First of all I'd like to say that as a European who has come to live in Hawaii, it is not only the Hawaiians who believe that there is a strong need for reparations for the Hawaiian people. I think it's impossible to live here in Hawaii with open eyes as an outsider, as somebody who is neither American nor Hawaiian, and not see how the Hawaiian people have been removed from their land, from their fishing rights; how there has been a fragmentation of culture; not to learn how the language has been suppressed in the schools, and so forth. It's a very moving and sad situation. And I would like to thank the chairman for reminding us, that the audience is not the gentlemen who have come today to listen to us, but the people in Washington who need to learn the truth about the situation here in Hawaii.

And it's from that point of view that I give testimony. I would like to introduce the testimony today—this pamphlet, an excellent pamphlet, called the History of Hawaiian Native Claims. It was produced here on the Big Island 4 years ago as the result of activity—well, a joint effort by the National Endowment for the Humanities, the Hawaii Committee for the Humanities, and the University of Hawaii Foundation. Of course, you gentleman are very aware of the existence of this yourselves, you made most of the information available to those who prepared it. But to our audience in Washington, and to anybody else who may require more clarification of the issues, I really recommend this document. I found it tremendously useful myself in clarifying what the questions are, what the legal means are of seeking redress, the issue of who qualifies, and the moral implications and moral definitions of reparations, and what generates entitlement.

There is also a succinct history of the Nation of Hawaii until sovereignty disappeared in 1983, and just five pages. Obviously a great deal has had to be left out—there's an extensive bibliography.

Senator **Matsunaga**. The booklet will be made part of the committee's files. It will be made available to members of the committee.

Mr. **Kutner**. Thank you very much.

Well, in closing, I'd like to make just one quote. Two quotes, I'm sorry. This time I'm quoting not from, as previously was heard, not from Hawaiian sources, but from the Congressional Record at the time.

First from then-President Cleveland, who said:

> I must say to my fellow Americans * * * this odious doctrine that there is no such thing as international law—that there is one law for a strong nation and another for a weak one.

And also from the Secretary of State at the time, Gresham, who said:

> The Queen's submission was coerced. The affair is discreditable to all engaged in it. It would lower our national standard to resort to selfish and dishonorable dealings with a lot of adventurers.

Now, I would like that last quotation to be brought to the attention of the gentlemen in Washington.

Senator **Matsunaga**. Thank you very much, Mr. Kutner.

Our next witness will be Margaret Dancel. Margaret, are you here?

If not, we'll go next to Charlie Gumapac.

STATEMENT OF CHARLIE GUMAPAC

Mr. **Gumapac**. Senator Matsunaga, Representative Akaka, aloha.

My name is Charlie Gumapac, Jr., and I am the president of the Big Island Hawaiian Business Association. And most importantly, I am a native Hawaiian.

I was born and raised in Waimanalo, Oahu, on homestead lands, and now live in Keaukaha, and on the waiting list of the Department of Hawaiian Homes.

Our association is in full support of the minority report given by Kaulana Na Pua. There are many questions and issues that have been raised regarding restitution to the Hawaiian people. And a token effort was made by Congress in the form of the Hawaiian Homestead Act in the 1920's, as the U.S. Government recognized a responsibility to the Hawaiian people. As we all know and feel, something must be done, not for the future, but for the present. As we go along, we've always heard that, let's do our homework, let's do things for the future of our children. As a native Hawaiian, this was told to me by my mother, and by my mother's mother, and so forth. Where does it end? Where does the future become the present?

My question to you, is when can we expect the positive answers from Congress, regarding the issue of restitution to the Hawaiians. We're not asking for handouts. We're asking for justice as we, the native people of Hawaii, have lost our birthright, be it the descendants of the ali'i, or of the commoners. And we've lost the birthright of our land.

Second, the question has been asked by many outsiders, why were the hearings held only in Kona. As the name of the Big Island illustrates, the geography of the island does not permit the majority of native Hawaiians from Keaukaha and Paleewa and from East Hawaii to participate in this hearing. It's easy to centrally locate meetings on all the outer islands—and notice, I said "outer islands"—of Kauai, Maui, Oahu, and Molokai. As a majority of the Commissioners gave their majority report against the native Hawaiians, the third question that needs to be answered is, What kind of impact does the majority report have, and what impact do you and the Commission have that can help the native Hawaiians? We have heard and participated in hearings—hearings for the Office of Hawaiian Affairs, hearings for the Department of Hawaiian Home Lands, and now the hearing for the Native Hawaiian Study Commission. As far as most of the native Hawaiians are concerned, they have had hearings to the point that we are deaf. When does it begin so that we can see the light at the end of the tunnel?

These questions we point to you, the Commissioners.

Aloha.

Senator MATSUNAGA. In response to your last question, I might point out as a member of the committee which has jurisdiction over this matter, that we're hoping these hearings will shed some light at the end of the tunnel. The Commission which made its findings and recommendations to the Congress came forth with an adverse report that we could not go ahead with. The majority of the Commission says the Hawaiians are not entitled to any compensation whatsoever, because the United States had no responsibility in the overthrow of the monarchy in 1893. If we accepted that, then there's no need for these hearings. The report would go to the Congress and Congress would probably say, Well, we'll accept the Commission's recommendations in the majority report and nothing will be done. Well, I'm here, and this is purely voluntary on my part, and the part of Congressman Akaka who doesn't even belong to the committee, but was made an honorary member pro tempore to sit with me, to gather evidence to support the minority report and to go forth to the Congress and say, the majority report is wrong. The minority report is what the Congress should adopt. The Commission is not part of the Congress. The Commission was appointed by the Executive, the President of the United States. That's his Commission. His Commission submitted the report to the Congress, to deny the Hawaiians their birthright. I want to be able to go back to my colleagues in the Senate—and Congressman Akaka to his colleagues in the House, to say that the minority report is what the Congress ought to adopt, not the majority report. In order to do that, we must have additional evidence. That's what we're here for. We are holding these hearings as expeditiously as possible, so that I can get back to Washington to my colleagues, I have enough evidence now on record, on which to introduce a bill to compensate the native Hawaiians and to bring justice long overdue. That's why.

Our next witness is Aala Akana.

STATEMENT OF AALA AKANA

Ms. AKANA. I would just like to start by saying that I concur in full with the minority report, and would like to go on record as such. Based upon reports that I myself have had done in 1973 when I was sent up to work as a special intern researcher with Patsy Mink, and produced a report on the passage of the Hawaiian Homes Act. This was done with regard to reparations that Aloha had gone and done at the time. And it was based on this and other reports that I came to the conclusion that, yes, I can stand in full support of the minority report. I thank you for that.

And so I will submit full testimony under separate cover to the committee. The one thing that I would like to point out that bothers me, and I need this opportunity to say so, is that many times I feel we become intimidated and perhaps coerced into compromising our values that have been passed down through generations of our Hawaiian people. Now, those values are something that through our family I have come to cherish, and to honor, and to obey. And I don't find any harm and any kind of shame in what we are as a people. Believing in the cultural doings, and beliefs, and philosophical outlooks of our people. And I do not believe that for 1 minute we should be put in a position to compromise these values and virtues. I do not like to sit in an audience and hear people say that they are sorry because they don't speak good English. So what? I do not like to sit in the audience and hear fellow Hawaiians feel like they have have to apologize to other Hawaiians for who they are. Because Liholiho said; "Who would not be wise on the paths so well traveled by my ancestors?" And sometimes we are put into a position where for so long we are looking into this glass ball from the outside, and we don't step inside that glass ball and say, Hey, listen, this is our glass ball. And this is where our cultural dictates are lost to us. So, in other words, when someone wants a Hawaiian luau, and they have a Polynesian show, we have compromised. Who is wrong? We must accept some of that blame. Each one of us must do our part to stop that encroachment upon our cultural dictates. We have kapu that we still live by. I certainly don't sleep at night. I believe that. But I don't think it's a superstition. I follow it. I believe in my aumukua, not because it is a sacrilege to the Christian faith. How could that be? It cannot be. Hawaiians became good Christians. They became good whatever they were. So it bothers me to see fellow Hawaiians intimidated by a culture that may have superior technology and perhaps areas of superiority that, when it comes into comparison with our own, we stand head and shoulders in such philosophical trends that they have not been able to touch. They have searched the world over to find the kind of philosophy that was our daily bread, that was our daily life that we lived. But yet, you know, I can stand here and tell you that in presentations that I made to different organizations on Hawaiian cultural things—and I'll sum up in a minute and a half—a good example of this is to talk of psychiatrists, and I'm a doctoral student in educational psychology, and to talk to these people on their terms and to say, "Here, I'm going to teach you how to play ponanei (phonetic), because this is not a game of checkers, this is a game of mind. And it is a game of using one's mind to outanticipate the moves of others." And to have this doctor turn around to me and tell me, "Well, are you sure that there can't be a tie in poanaei?" This is my game, not yours. So what do I tell him? You know, in order to be nice, I tell him, "Prove me wrong, I'm humble."

I say, we believe in what we say. And we will not be proven wrong, because we are humble.

Mahalo.

Senator MATSUNAGA. Our next witness is Roseline Borsing. Oh, she left.

[Material submitted by Ms. Borsing follows:]

AFFIDAVIT OF PUBLICATION

State of Hawaii)
) SS:
County of Hawaii)

ERNIE UZZARDO, being first duly sworn, deposes and says:

1. That he is the ADVERTISING MANAGER of WEST HAWAII TODAY, INC., publisher of West Hawaii Today, a newspaper published in the City of KAILUA-KONA, State of Hawaii.

2. That the "AGRICULTURAL REZONING, NOTICE OF TUTELAGE, PUBLIC NOTICE PUBLIC NOTICE OF LEGAL REPRESENTATION: THIRD DIVISION: ZONE 8; SECTION 9. REPROBATION OF THE NON ELECT", of which a clipping from the newspaper as published is attached hereto, was published in said newspaper on the following date(s) February 10, 19 84 (etc.).

Ernie Uzzardo

Subscribed and sworn to before me
this 15th day of February, 19 84
Lana L Taira
Notary Public, Third Circuit,
State of Hawaii

My commission expires 8/4/85

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PUBLIC NOTICE OF LEGAL REPRESENTATION:
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PUBLIC NOTICE
REVOCATION OF TENACY
WRIT OF ABROGATE:

Admission of legal representation, representing for redirection of all assessed properties: Third Division: Zone 8: Section 9

WRIT OF ATTACHMENT:

Revocation of tenacy: Parties of the second part, shall not represent claims of title, nor unlawfully tresspass upon this private land. Dated Jan. 1984

REEXONCIATION NOTICE OF EVICTION

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PUBLIC NOTICE OF LEGAL REPRESENTATION:
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REPROBATION OF THE NON ELECT
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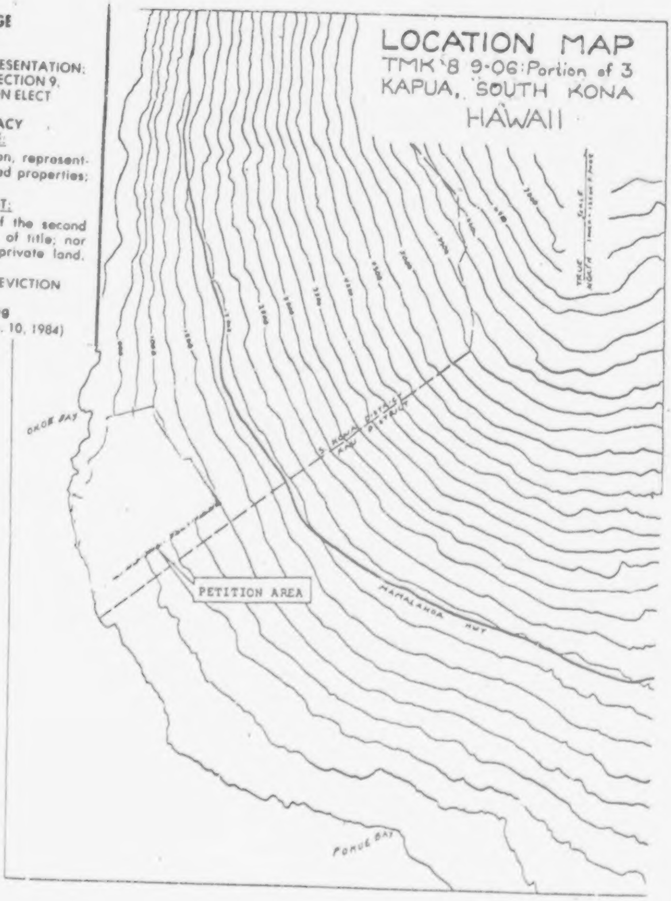
NOTICE OF APPEAL
By: Roseline K.G. Boring
(No. 859—West Hawaii Today: Feb. 10, 1984)


LOCATION MAP
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KAPUA, SOUTH KONA
HAWAII
TRUE NORTH
SCALE
OKOE BAY
S. KONA DISTRICT
KAU DISTRICT
PETITION AREA
MAMALAHOA HWY
POHUE BAY

PROCLAMATION
OF
CONSTITUTIONAL
SOVEIGNTY

AFFIDAVIT
OF
APPELLANT
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EXEQUATUR

NOTICE
OF
TUTELAGE

CONGRESSIONAL APPEAL

THIS DOCUMENT REPRESENTS A SOVEIGN TUTELAGE HELD IN TRUST THROUGH HEREITAGE WHICH CONSTITUTIONALLY MUST BE RECOGNIZED FROM THE EXECUTIVE CHAMBERS OF THE PRESIDENT OF THE UNITED STATES OF AMERICA.

INTERESTED ADMINISTRATIONS OF THE DISTRICT OF HAWAII SHALL RECOGNIZE THIS ATTESTATION OF APPELLATION. THROUGH LAWFUL ACTS OF CONSTITUTIONAL JUDICIAL LAW THIS PRIVATE ESTATE ADVOCATES REASSESSMENT REPROBATION RECOUPMENT THROUGH AN ATTESTATION OF AFFIDAVIT DEFINED IN LAW AS A WRIT OF ABROGATE. THIS DEFINITION OF ABSTRACT REPRESENTATION IS CLEAR LEGAL PRINCIPLE AND SHALL BE CONCIDERED SECURITIES AND CONCOURSE REPRESENTING DEMOCRACY THROUGH LIBERTY. THIS LITIGATION OF DOCUMENTATION LAWFULLY DEFENDS THE INTEGRITY OF A SOVEIGN CULTURAL HERITAGE AND WAY OF LIFE. CONSTITUTIONALLY REPRESENTED AS A SOVEIGNTY OF ESTABLISHMENT AND TRADITION OF DIGNITY.

REPROBATION OF THE NON ELECT INCORPERATES RESPONCIBLE PROBITY WHEN REGARDING THE ISSUES OF PROPERTY EMENDATION.THIS CAREFUL WEIGHING THE VALUES OF HUMAN BENEFIT FROM THE EFFORTS OF DETURMINATION AND RESPONCIBILITY LAWFULLY CONSUMATE A STANDARD OF HUMAN BENEFIT FOR A CULTURE OF CONSTITUTIONAL EMINENCE. APPELLANT JUDICIAL AMENDMENTS LEGALLY CONSTITUTE THIS DOCUMENTED REPRESENTATION FOR AN HERITAGE OF EQUALITY THROUGH HUMAN JUSTICE FOR SOUND ECONOMIC PRINCIPLE.

REPRESENTING THE LAWFUL COURSE OF HUMAN RESPECTS WITHIN THE BOUNDRIES OF THIS TERRITORIAL PROVINCE ARE THE LAWFUL HUMAN RIGHTS OF FIVE LEGAL PROCTORS REPRESENTING THIS ESTATE. REASSESSMENT MANDATES THIS

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DOCUMENT AS A FORMAL WRIT OF ABROGATE NECESSARY TO LEGALLY REPLICATE THE PRINCIPLES OF THIS HERITAGE THROUGH JUSTICE AND CONSTITUTIONAL LIBERTY.

ABROGATION IS APPELLANT JUDICIAL LITIGATION REPEALING AND ABOLISHING ALL PREVIOUS LEGAL CONTRACTS OF AUTHORITY OVER OR UPON THE FORMAL LEGAL RETENSION REPRESENTING THIS HAWAIIAN TRUST OF OWNERSHIP AND TENACY OF HERITAGE.

APPROIATE FOREBEARANCE THROUGH SOVEIGN CONSTITUTION AND ANCESTORIAL ESTABLISHMENTARIANISM HONORED AS THE LAWS OF GOD AND THE LAWS OF JUSTICE OVER AND UPON THE LAND AND PROPERTIES OF THIS SACRED TERRITORY REPRESENTS THIS ENTITLEMENT.

THIS SACRED TUTELAGE OF JUSTICE AND OF SOVEIGNTY REPRESENTS THE WILL OF HERITAGE AND AN ANCESTORIAL TRUST OF HAWAIIAN CONSTITUTION. HAWAIIAN ATTESTATION AND CULTURAL SOVEIGNTY REPRESENT NATURAL PRINCILPES OF HERITAGE MEANT FOR THE ENDOWMENT OF SECURITY AND CULTURAL REDIRECTION.

TRADITIONALLY THIS EQUALITY OF RELIGIOUS FAITH AND CONSTITUTIONAL LIBERTY SECURE THIS TRUST OF HERITAGE.

THE LAWS OF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA SHALL RECOGNIZE THIS SACRED LEGAL AFFIDAVIT OF SACRED TESTAMENT AS LAW AND CURRENCY FOR THE FUTURE WEALTH OF THIS HAWAIIAN TERRITORY.

PROCLAMATION
OF
CONSTITUTION

:::::::::: NOTICE OF APPEAL :::::::::::::::

I-6-83

ATTN:

CIRCUIT COURT
OF THE
THIRD CIRCUIT
: STATE OF HAWAII :

REPRESENTITIVE
GRACE LAND COMPANY

WRIT OF ABROGATE

:ADMISSION:

PROCLAMATION OF APEACHMENT

:ADMISSION:

PLAINTIFF; GRACE LAND COMPANY

MRS. ROSELINE K. BORING - PRES.
(EXECUTOR)

:ADMISSION:

ATTN: NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES OF AMERICA....................

ATTN: PRESIDENT OF THE UNITED STATES OF AMERICA.............

:::: NOTICE OF APPEAL ::::

***

AFFIDAVIT OF SOVEIGN
CONSTITUTIONAL APPEAL

A
SOVEIGN
PROCLAMATION
OF
CONSTITUTIONAL
APPEACHMENT

ADMISSION

THIS LITIGATION REPRESENTS COMMENCEMENT OF APPEAL TO THE PRESIDENCY....

ABROGATE OF ATTESTATION
ANTIDISESTABLISHMENTARIANISM CONTESTATION
SOVEIGN WRIT OF APPEACHMENT THROUGH
REPROBATION EXCOMMUNICATION, THROUGH
WRIT OF EXLIBRIS EXEQUATUR:

.... THE PRESIDENTCY SHALL REDILLBERATE THROUGH REPROBATION OF THE NON - ELECT, A CONTESTATION OF ANTIDISESTABLISHMENTARIANISM APPEACHMENT. THIS IS A WRIT OF EXPISCATION.

:: NOTICE OF APPEAL ::

1840*
1869*

WRIT OF ABROGATE

:ADMISSION:

ADMISSION OF LEGAL REPRESENTATION AND,
LEGAL REPRESENTATION REPRESENTING THE SOVEIGN RIGHTS
OF THE PLAINTIFF: TO RENUMERATE, THROUGH
REPROBATION OF THE NON-ELECT, RESEIZER OF ALL ASSESSED
PROPERTIES: THIRD DIVISION: ZONE 8 ....SEC. 9.

AFFIDAVIT' OF APPEAL

:ADMISSION:

GRACE LAND COMPANY
PLAINTIFF:

: REPRESENTITIVE
MRS. ROSELINE K. BORING
EXECUTOR

COURT SEAL

Mrs. Roseline K. Boring
MRS. ROSELINE K. BORING
(SIGNATURE)

Chambers of
Judge Shunichi Kimura

Circuit Court of the Third Circuit
State of Hawaii
STATE OFFICE BUILDING
75 AUPUNI STREET
HILO, HAWAII 96720

July 13, 1983

Grace Land Company
Ho O'Puloa Ranch
Milolii Fishing Village
Roseline K. Boring
P. O. Box 363
Honaunau, Hawaii 96726

Dear Mrs. Boring:

Enclosed please find the documents you had forwarded to Judge Kimura. As per your request, we are returning them to you.

Very truly yours,

R. S. Kusumoto
Clerk

encl.

STATE OF HAWAII (
(S.S.
COUNTY OF HAWAII (

Roseline K. Boring BEING FIRST DULY SWORN, ON OATH DEPOSES AND SAYS: THAT she IS THE AFFIANT HEREIN; THAT she HAS READ THE AFFIDAVIT AND KNOWS THE CONTENTS THEREOF; AND THAT SAID AFFIDAVIT IS TRUE TO THE BEST OF her KNOWLEDGE AND BELIEF.

Mrs Roseline K. Boring

SUBSCRIBED AND SWORN TO BEFORE ME THIS 11th DAY OF July 19 83 .

Notary Public, Third Judicial
Circuit, State of Hawaii

My commission expires: 5/26/86

NOTICE OF APPEAL

WRIT OF ABROGATE

**1840

(ADMISSION)

WRIT OF APPEAL

::::::: ADMISSION OF COMPLAINT ::::::

ADMISSION:

ADMISSION: COMPLAINT OF FRAUD
ADMISSION: COMPLAINT OF EMBEZZLEMENT
ADMISSION: COMPLAINT OF UNLAWFUL TRESSPASSING ....

AGAINST: PARTY OF THE SECOND PART,
DEFENDANTS;

- :::: MR. WILLIAM DILLINGHAM ASSIGNEE*
- :::: MEMBERS OF THE DILLINGHAM INVESTMENT FIRM
- :::: MEMBERS OF THE BOARD: BISHOP ESTATE TRUST
- :::: MEMBERS OF THE FIRM: CARLSMITH, CARLSMITH, WICHMAN, AND CASE.

PRVOCLAMATION OF APPEACHMENT

ADMISSION

PLAINTIFF : GRACE LAND COMPANY

MRS. ROSELINE K. BORING
EXECUTOR

NOTICE OF APPEAL

PROVISIONAL
CONSTITUTION
1840

PROCLAMATION
OF
INJUNCTION

:ADMISSION:

CIRCUIT COURT
OF THE
THIRD CIRCUIT STATE OF HAWAII

HENCE; SHALL RECOGNIZE; COMMENCEMENT OF SUIT REPRESENTING THE SOVEIGN RIGHTS OF DOMAIN,AND SACRED RIGHTS OF DOMAIN, OF THE PLAINTIFF.

:ADMISSION:

PLAINTIFF: MRS. ROSELINE K. BORING

LANDLORD, LANDLORDS, LEGAL PROCTOR, SOVEIGN BENEFACTOR, OWNER OF DEVISE TO ALL REAL PROPERTIES ASSESSED.

MRS. ROSELINE K. BORING - EXECUTOR
CONTENTS ADMISSION: TO SUITS OF:
CONSPIRACY, EMBEZZLEMENT, FRAUD, AND ILLIGAL TRESSPASS;
AGAINST THE DEFENDANTS: PARTY OF THE SECOND PART.

:ADMISSION:

ATTN:

THE CIRCUIT COURT OF THE THIRD CIRCUIT, MUST REALIZE THE SOVEIGN RIGHTS OF THE PLAINTIFF.

THE PLAINTIFF ENTERS THIS COMPLAINT TO THE COURT.

DEFENDANTS: PARTY OF THE SECOND PART; HENCEFORTH; SHALL

NOTICE OF APPEAL

RECOGNIZE THIS WRIT OF ATTACHMENT.
REVOCATION OF JOINT TENACY IS DEMANDED BY THE
OWNER, LANDLORD, PLIANTIFF.
SUITS OF LAW ARE NOW IMPLIED AGAINST
ALL DEFENDANTS.

:ADMISSION:

PLAINTIFF:
MRS. ROSELINE K. BORING

THROUGH CONSTITUTIONAL RECOURSE, THE PLAINTIFF, BEARS SOVEIGN OWNERSHIP, AND LEGAL CLEAR TITLE TO ALL ASSESSED PROPERTIES.

THROUGH SOVEIGNTY, AND WILL OF PROVIDENCE; DECRESS AN INJUNCTION OF SUIT;

REVOCATION OF TENACY: AND NOTICE OF ATTACHMENT

:ADMISSION:

PLAINTIFF:

REVOCATION OF TENACY IS THE PLAINTIFFS' LEGAL FUNCTION: HENCE;
PARTIES OF THE SECOND PART;

SHALL NOT REPRESENT THEIR CLAIMS OF TITLE, OR UNLAWFULLY TRESSPASS UPON THIS PRIVATE LAND, THROUGH DECENT.

:ADMISSION:

PLAINTIFF: GRACE LAND COMPANY

MRS. ROSELINE K. BORING - EXECUTOR,

DECLARES: NOTICE OF EVICTION: AND,
NOTICE OF ATTACHMENT.

NOTICE OF APPEAL

:ADMISSION:

PLAINTIFF:

GRACE LAND COMPANY

REPRESENTATION: MRS. ROSELINE K. BORING - EXECUTOR.

THROUGH SOVEIGN DESCENT;

DECLARES: NOTICE OF EVICTION, AND NOTICE OF ATTACHMENT OVER THE FREEWILL: OF SAID, DEFENDANTS: PARTY OF THE SECOND PART.

:ADMISSION:

PLAINTIFF:

MRS. ROSELINE K. BORING - EXECUTOR,AND LEGAL SOVEIGN LANDLORD, DECLARES; THAT, HERE AFTER; ANY BILATERIAL AGREEMENT OR CONTRACT OF POSSESSION, FOR THE POSSESSION OF ANY REAL PROPERTY OR PROPERTIES;OR LEIN OR LEINS OF AUTHORITY, OVER OR UPON; ANY REAL PROPERTY OR PROPERTIES, SHALL BE CONSIDERED UNCONSTITUTIONAL AND UNLAWFUL.

:ADMISSION:

ATTN.

THE CIRCUIT COURT OF THE THIRD CIRCUIT, SHALL RECOGNIZE THAT; THE DEFENDANTS; PARTY OF THE SECOND PART: NOW, AT THIS TIME, HAVE NO LEGAL CLAIM OR TITLE TO THE ASSESSED LAND IN QUESTION.

- GRACE LAND COMPANY

NOTICE OF APPEAL

:ADMISSION:

ATTN. / CIRCUIT COURT
OF THE
THIRD CIRCUIT

PLAINTIFF:

GRACE LAND COMPANY

AMENDS BY WAIVER THROUGH SOVERGN RIGHTS OF DOMAIN, THE COMMENCEMENT OF THIS LITIGATION.

NOTICE OF APPEAL

PROCLAMATION OF ATTACHMENT

:ADMISSION:

REPROBATION OF THE NON - ELECT

INJUNCTION OF CONTESTATION

:ADMISSION:

DECLARATION OF LEGAL REPRESENTATION
AND
SOVEIGN RIGHTS OF DOMAIN AND OWNERSHIP

:ADMISSION:

REPRESENTING: GRACE LAND COMPANY

PLAINTIFF:

GRACE LAND COMPANY
NIKE CORP.

GRACE.LAND COMPANY
MRS. ROSELINE K. BORING - PRES.
(EXECUTOR)

Mrs. Roseline K. Boring
MRS. ROSELINE K. BORING
(Signature)

~~PRESIDENTIAL VERIFICATION ***~~

~~PRIVATE PROPERTY~~
~~PRIVATE PROPERTY~~
~~PRIVATE PROPERTY~~
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WRIT
OF
EXLIBRIS
EXEQUATUR

ATTN. CHIEF OF STAFF/ PRESIDENT OF THE UNITED STATES

EDITION:

GRACE LAND COMPANY

AFFIDAVIT OF SOVEIGN
CONSTITUTIONAL
APPEAL

NOTICE
OF
TUTELAGE

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~~PRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPROPERTYP~~
~~PRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPRIVATEPR~~

REPLY TO:
GRACE LAND COMPANY
C/O MRS. BORING
P. O. BOX 363
HOUNAUNAU HAWAII

ADMISSION

THIS LETTER IS TO BE CONCIDERED EVIDENCE IN A COURT OF LAW AS LEGAL REPRESENTATION AND PROOF OF OWNERSHIP, AND PROPERTY OF PROPERTIES TAXED AS REAL PROPERTY TAX BILL: DISTRICT, HAWAII; ZONE EIGHT, SECTION NINE.

SEASONS GREETING LOVE AND PEACE FOR THE SACRED NEW YEAR

x Mrs. Roseline K. Boring
MRS. ROSELINE K. BORING
EXECUTOR

~~PRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPROPERT~~
~~PRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPROPERT~~

AFFIDAVIT OF REEXHONORATION

ATTN.

GOVERNOR

STATE OF HAWAII

X ____________________

SIGNATURE
GOV. GEORGE ARIYOSHI EXECUTOR ****

THE HONORABLE GOVERNOR SHALL RECOGNIZE:

THIS IS PERSONAL LITIGATION OF PRETHIAL EXEMPLIFICATION, REPRESENTING THE CONSTITUTIONAL SOVEIGNTY AND LAWFUL SOVEIGN RIGHTS OF DOMAIN, CONCECRATED THROUGH ANCESTRAIL DESCENT TO,AND OF, HER EXCELLENCY MRS. ROSELINE K. BORING LEGAL PROCTOR, LANDLORD, EXECUTOR.

THE HONORABLE GOVERNOR SHALL HENCE RECOGNIZE,

IMMEDIATE CONCIDERATION FOR THIS TERRITORY IS REQUIRED BY THE GOVERNOR, FOR MRS. BORINGS IMMEDIATE REEEXHONORATION. THROUGH NOTIFICATION OF AGRICULTURAL ZONING, THIS ESTATE EVOCATES RECONSECRATION THROUGH REDIRECTION OF REPROBATION OF THE NON ELECT.

MRS. BORING WISHES TO CLARIFY TO ALL FUTURE BUSINESS CONCERNS THAT, THIS IS RURAL LAND SACRED IN NATURE, MEANT FOR THE AGRICULTURAL WEALTH OF THE STATE AND COUNTRY OF HAWAII. MEANING DIRECTLY, THE UNWELCOME NATURE OF ANY SORT OF HOUSING PROJECTS, OR ANY SMALL INDUSTRY, PRIMARILY ANY OUT OF STATE BUSINESS CONCERN, UPON MRS. BORINGS PRIVATE ESTATE.

~~PRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPROPERT~~
~~PRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPROPERTYPRIVATEPROPERT~~

THIS ESTATE AND TERRITORY ARE BASED UPON AN HAWAIIAN WAY OF LIFE, AND THE HAWAIIAN STANDARDS OF ECONOMIC GROWTH, VALUE, AND PRINCIPLE.

MEANING DIRECTLY THAT,THE OWNERS AND HEIRS OF THIS LAND, HENCE FORBID ANY FURTHER USE OF THIS PRIVATE LAND.

ANY AND ALL PROPERTIES DEEDED WITHIN THE BOUNDRIES ZONED ZONE EIGHT, SECTION NINE, DEEDED LAWFULLY TO MRS. BORING, BE RETURNED TO HER THROUGH LAWFUL RECOURSE; COURT DECISION; OR THE CONSTITUTIONAL SOVEIGN RIGHT OF APPEACHMENT THROUGH REPROBATION OF THE NON ELECT.

THE GOVERNOR SHALL PLEASE RECOGNIZE MRS. BORINGS APPEAL AS AN INJUNCTION OF CONTESTTATION,WITH AN HONORARY SIGNATURE FOR THE THIRD CIRCUIT COURT OF THE THIRD CIRCUIT RECOGNIZING MRS. BORINGS APPEAL FOR REVOCATION AND REDIRECTION.

THE GOVERNOR SHALL HENCE RECOGNIZE THAT;
THIS LEGAL LITIGATION MUST REPRESENT AN IMMEDIATE INJUNCTION OF ATTACHMENT, IMPLYING A SUIT OF LAW, AGAINST MR. WILLIAM DILLINGHAM, ASSIGNEE.

MRS. BORING WISHES A PRIVATE HEARING WITH THE GOVERNOR AND MR. DILLINGHAM TO CLARIFY THIS MATTER OF TENACY FURTHER.

EVERY PRINCIPLE OF JUSTICE BELONGS TO MRS. BORING IN REPRESENTING THIS TERRITORY WITH THE JUSTICE OF THE LAWS OF THIS LAND.

HER EXCELLENCY WISHES TO BE PRESENTED TO THE GOVERNORS CHAMBERS BY HER STATE REPRESENTITIVE MRS. KAMALII.

MRS. BORING INVITES THE GOVERNOR PERSONALLY TO JUDGE AND DEFINE THIS APPEAL DESIGNED TO BENEFIT THE WELL BEING OF THE HAWAIIAN PEOPLE.

MRS. KAMALII SHALL FORWARD THE GOVERNORS REQUEST PERSONALLY THROUGH CORRESPONDENCE, TO MRS. BORING.

THE GOVERNOR SHALL HENCE RECOGNIZE THAT;
THIS LITIGATION IS A LEGAL WRIT OF CONTESTATION OF ABROGATE.
A FORMAL DEMAND FOR THE LEGAL TENACY OF MR. DILLINGHAM.

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GRACE LAND COMPANY
NIKE CORP.

GRACE LAND COMPANY
P.O. BOX 363
HOUNAUNAU...HAWAII 96726

DEAR SIR,

THIS ESTATE REQUIRES YOUR IMMEDIATE CONCIDERATION REGARDING THE LEGAL RIGHTS OF OWNERSHIP OF CERTAIN ASSESSED PROPERTIES, UPON THE HAWAIIN TERRITORY ZONED HAWAIIAN DISTRICT, ZONE EIGHT; SECTION NINE, DEEDED LAWFULLY THROUGH ANCESTRAL DECENT TO THE OWNERS AND HEIRS OF THE GRACE FAMILY OF HAWAII.

THIS REQUISITION OF ATTESTATION, AS AN HAWAIIAN ASSIGNEE, REQUIRES YOU TO QUALIFY IN AN HAWAIIAN COURT OF LEGAL REPRESENTATION, THE LEGAL CREDITABILITY OF YOUR RIGHT OF OWNERSHIP TO THIS PRIVATE LAND UPON THIS PRIVATE ESTATE.

THIS LITIGATION IS TO INFORM YOU, THE ASSIGNEE, THAT THIS ESTATE NOW REINCORPERATES ALL REAL PROPERTIES BOUND THROUGH LEGAL CONTRACT.

CLEARLY REPROBATION OF THE NON ELECT DEMANDS REDIRECTION, FORCING THE LEGAL BENEFACTORS TO FOLLOW THIS STATES NEW REZONING PROCLAMATION, OF THIS PROVINCIAL TERRITORY AS AN AGRICULTURAL DISTRICT.

THE GRACE LAND COMPANY MUST INFORM YOU THAT WITHOUT LEGAL CONSULTANTS, THIS ESTATE THROUGH WRIT OF APPEACHMENT DECLARES THIS NOTICE OF ATTACHMENT, OVER THE FREEWILL OF ALL PARTIES OF THE SECOND PART.

THIS ESTATE RENUMERATES RESEIZER OF ALL ASSESSED PROPERTIES AT THIS TIME: DATED: JANUARY FIRST; NINTEEN EIGHTY FOUR: DISTRICT OF HAWAII.

WE WELCOME YOUR REPLY

THANK YOU

GRACE LAND COMPANY
P.O. BOX 363

THIS LITIGATION IS FORMAL LEGALITY DESIGNED TO INCORPERATE THIS TERRITORIAL ESTATES AGRICULTURAL ASSETS FINANCIALLY.LEGAL REDIRECTION MANDATED THROUGH CONGRESSIONAL REZONING, AND ECONOMICAL GROWTH, REQUIRES THE BOARD OF DIRECTORS OF THE GRACE LAND COMPANY TO INFORM YOUR PRIVATE FIRM OF THIS REPROBATION INTENDED DIRECTLY TO RESEIZE THIS ESTATES PRINCIPLE INDUSTRIES.

AT THIS TIME: DATED; JANUARY FIRST NINTEEN EIGHTY-FOUR, WE MUST INSIST YOUR CONCERN RELINQUISH ALL CLAIMS OF LEGAL CONTRACT OVER ALL PARCELS OF REAL PROPERTIES CONTAINING MACADAMIAN NUT, COFFEE, OR AVOCADO,PRODUCE BELONGING TO THE WEALTH AND FUTURE OF THIS TERRITORIAL PROVINCE.

CLEARLY THE GRACE LAND COMPANY MUST LEGALLY MAINTAIN THESE PRIVATLY OWNED REVENUES.

THIS INJUNCTION OF ATTACHMENT IS LEGAL RETENSION; YOUR FIRMS FAILURE OF COMPLIANCE WITH THE DECISION OF THIS BOARD, WILL RESULT IN A FORMAL NOTICE OF EVICTION.

REPLY IMMEDIATLY

THANK YOU

GRACE LAND COMPANY
P. O. BOX 363
HOUNAUNAU HAWAII
96726

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GRACE LAND COMPANY
P.O. BOX 363 HO.HI.
:::::::::::::::::::::::

ADMISSION:

DATED: JAN.FIRST; NINETEEN EIGHTY-FOUR.

ADMISSION: COMPLAINT

ADMISSION: COMPLAINT OF SLANDER:

CONCERNING ACCESS TO PROPERTY

LAND PARCEL: TWENTYNINE THIRD DIVISION:
ZONE EIGHT: SECTION NINE: PLATEAU ZERO ONE.
ATTN: REPRESENTITIVES OF J. K. PROPERTIES CORP.

HAWAIIAN TENACY REQUIRES:

THE HAWAIIAN IS BOUND THROUGH LANGUAGE, CULTURE,AND LEGAL RESPONCIBILITY TO LAWFULLY REPRESENT HAWAIIAN INTERESTS RESPONCIBLY. YOUR FIRMS LEGAL RESPONCIBILITIES SHALL NOT RESTRICT THE SOVEIGN LEGAL RIGHTS OF OWNERSHIP OF HEIRS OR DEPENDANTS OF THIS PRIVATE FAMILY UPON THEIR LAND OF ANCESTORY AND DECENT.IT IS NOT POSSIBLE, AS AN INVESTMENT COMPANY TO TAKE THIS FAMILY FROM THE RESPONCIBILITIES OF THIS PRIVATE ESTATE.

AT THIS TIME YOU SHALL NOW KNOW LEGAL HAWAIIAN TENACY IS LAWFULLY REPRESENTED THROUGH FIVE HAWAIIAN ASSIGNEESHIPS.

ADMISSION:

COMPLAINT OF SLANDER REGUARDING ACCESS TO PARCEL TWENTYNINE.

HENCE,J. K. PROPERTIES CORP., ARE INFORMED AS OF JAN. 1ST. OF THIS HAWAIIAN FAMILIES RIGHT OF TENACY OVER AND UPON THIS SACRED LAND OF DECENT.

Senator Matsunaga. Tommy Miles is our next witness.

STATEMENT OF TOMMY MILES

Mr. Miles. I have to apologize for not having a script today to present today. But I have been active and supportive of Kamali'i's work in her volume II. And I am proud to say that I have been a contributor to that work. And the marvelous accomplishment by this person and her right hand and all the help she's been given from you people is certainly encouraging for any of those that can call themselves keiki o ka aina like I do—like you do.

I will have now, as I have registered with you, the ability in the next 14 days or so to submit the script and that I will do. I approach the business of reparations and the worthiness of restitution not so much as to what happened at the time of overthrow. I think that what is just as important as that is the 40 or 50 years prior to that time, from the Presidency—the ninth Presidency of William Henry Harrison to 1893. That there was a definite and a conclusive urgency for the United States to exercise control over these islands and this they did. And that is the theme that I'm approaching to support what happened in 1893.

There is lots and lots of evidence through history to show that this necessity was there. Recently, Helene Heio [phonetic] wrote a wonderful book called "The Betrayal of Liliuokalani," with much publicity. Given on that book is a whole page in the Honolulu Advertiser, given to this beautiful book—beautiful story, a beautiful history of Hawaii. But damn it, by some quirk in this article itself, if you will examine it, it says that Stevens, the American commissioner here at the time of overthrow, commanded and accomplished the overthrow on his own cognizance, and therefore the United States is not guilty of the overthrow. That's one of the reasons why the United States is not culpable in the overthrow. All the way through history, you will find that these same statements have been made over and over again. And if we go do something to refute these mistakes today, as we find them, then we're going to have to live with that history—the mistakes that history has made over the last 200 years, as far as the Hawaiians are concerned. I have gone to Aloha now for 1 whole year to try and get them to do something constructive on this, and I hope that one day they will.

Thank you.

Senator Matsunaga. I truly believe what you just told us, Tommy, that history is recorded in writing, not so much in word spoken. And it is so important that we get the right and the true facts of history in writing and into the record, and that's what we are trying to do today.

Mr. Miles. And now we have Hawaiian organizations that is supported and has the wherewithal to do this sort of thing, and it's duck soup. It's easy. If you do it volume by volume. And not allow it to go for 100 years, and the facts that you teach your kids in school is wrong.

Senator Matsunaga. Thank you, Tommy. I appreciate your testimony.

Tommy and I go back a long time. On Kauai, I was a little boy when Tommy used to work at Mokalia Plantation—that's off the record.

Our next witness is Reynolds Kamakawiwoole. Did I get your name right?

Mr. **Kamakawiwoole**. Yes.

Senator **Matsunaga**. I can pass for part Hawaiian.

STATEMENT OF REYNOLDS KAMAKAWIWOOLE

Mr. **Kamakawiwoole**. I would like to thank all of the people that came here today. I especially came from a far distance, and I'm just one of those in residence of Honakaa.

I have a question about the session being held also in Hilo, but from your statement given, I'm happy to hear that you came to Kona also.

I'm here representing those persons that really are not belonging to any organizations. And I'm really here to say that I humbly support the minority report of the Native Hawaiians Commission. Gentlemen, as you look into the report in yourself, you can see there's been a violation of law. As many of you know, there is such things as common law; there's things that can happen in different places—but a common law controls that portion of the area and that it was a violation of law. It is a question of whether there was a violation of law. It's very understandable that there was evidence secured by the Commission to provide such statements connected with all of that—that was studied by the Commission. I'd like to reflect upon much of the studies that were made by Kamali'i, and I'd like to say that they did a wonderful job. I fully support that this is a positive move toward the Hawaiians getting reparations, or whatever it is—getting something for what was done wrong.

President Cleveland himself had understood this. A President of the United States, he had understood that there was something wrong in what had happened, when the U.S. Marines had landed here. The U.S. Marines is an agent of the United States.

They are responsible for acts that they do, like you or I are responsible for any act that we do against the Government. In view of that, we're looking at something that is really something bigger than the Nicaragua incident that's occurring right now. It's very frustrating to think of the past. As a result, we do not think of the past so much, but we try and work for the best for the future. It's frustrating to see just a very small handful of young people here today. The older people are saying to us today get with it. Get with it. Work it. Work this whole thing out. I'm standing here today taking my time, because I know that some of the young people are working out there today, and that's really difficult for me to see that this Commission go on and not to hear some of the young—of their views. We are going to be the winners of, you know, the coming years. Our older people are here to say that they're going to support our views. But we are going to need all the help we can get. We are looking at something is right, and the right thing is that we accept the minority report, gentlemen. Go out there and go for it.

Thank you.

Senator MATSUNAGA. Thank you very much, Reynolds. And I am truly happy to see the younger ones are participating, such as you.

Our next witness is Joanie P. Kealoha. Joanie? While we're looking for her we'll go to the next witness, Moanikeala Akaka.

We'll be happy to hear from you.

STATEMENT OF MOANIKEALA AKAKA

Ms. AKAKA. Aloha Mai, Senator Spark Matsunaga and committee members.

My name is Moanikeala Akaka. In my capacity as the Hawaiian consultant for ANA [Administration of Native Americans], which is a part of the Department of Health and Human Services in Washington, DC, I made recommendations as to how ANA can help Hawaiians become socially and economically more self-sufficient. I am also a spokesperson for Aloha Aina and statewide leader of the Protect Kaho' olawe Ohana. And for your information, a handful of us started the Hawaiian movement in Kalana Valley, Oahu, in 1970.

Several years ago, the Native Hawaiians Study Commission toured the islands to get mana'o (thinking) from the Hawaiian people on the injustice done to our Hawaiian Nation by America. Heartfelt testimony, facts, and family tragedies were poured out, in some cases until 4 a.m. in the morning, throughout the State. But it was listened to by prejudiced, deaf ears of Reagan's six bureaucratic, Washington, DC appointment on the Commission. We hope that we are not wasting our time again by coming before this body of Federal officials.

Incidentally, I live on Hilo—as I have mentioned to you before, most of the Hawaiian population of this Island do live on the side of the island, and since my truck broke down, I had to hitchhike across the island to be with you here today. And in spite of the fact that the mayor was fogged in and his helicopter couldn't make it off the landing strip, I stuck my thumb out, and had to get over here by car.

How can you, who represent America, who raise your children with the ideals of democracy, justice, and fair play, in all clear conscience allow history to be distorted with the majority opinion lie: that American had nothing to do with the overthrow of our Queen Lili' uokalani, whose hanai (adopted) father, Abner Paki, was my great-great-great-grandfather. He was also the father of Princess Bernice pauahi Bishop, benefactress of the Bishop Estate.

Minister Stevens was an agent of the American Government, and it is known that for several months before the overthrow he advocated annexation to America every chance he got. Author Edwin Hoyt, who wrote the book, "Davies," about British tycoon Theo H. Davies, states that in 1892 Stevens wrote of "United States predominance" of Hawaii. Hoyt writes that Secretary of State James Blaine and U.S. President Benjamin Harrison "were only looking for an excuse to seize Hawaii," according to Honolulu Advertiser article dated December 8, 1983, page E-1, entitled, "Davies From a British View." The author, Hoyt, adds that, "Stevens was their willing servant." And here is the article for me to submit to you.

It is common knowledge that at the time of the overthrow, then-President Grover Cleveland, according to his personal papers at Princeton University, was "outraged at the injustice that was done to the Hawaiian people and monarchy." This was a statement of admission and guilt by America's Commander in Chief, and it was not until Cleveland left office that the collusion and annexation was completed in 1898. The Blount report commissioned by Cleveland is imperative reading in order to pass honest judgment about America's role from American standpoint.

The majority Commission report should have had in all history that admission of guilt by America which the facts, history, and truth cannot hide. America continues to lose respect in the eyes of the world as frauds like this majority report are allowed credibility. Don't you realize that when justice begins to come back to the Hawaiian people, that there will be more aloha to share on these islands; and that it won't be necessary for the State and H.V.B. to spend many, many thousands and thousands of dollars on TV ads telling the local people that we "must be nice" to the tourists, for the aloha spirit will be more natural and grow as justice and aloha starts coming back to my people.

As part of restitution, we need land and monetary compensation, for we are landless and strangers in our own homeland. We are not even allowed the full use of our land trusts—Hawaiian homes lands and section 5(f) ceded lands that are a part of our State constitution. There is a waiting list of over 8,000 families for Hawaiian homestead land; some have waited 10, 20, and 30 years. Some die waiting to get on this reservation land. These ceded lands should be opened up to the Hawaiian people for long-term leases. To those Hawaiians desiring a more rural life style, Hawaiian homestead "raw" land should be opened up in areas like Kaiu where there is no Hawaiian homes land for those people to live on. What about here? There's no Hawaiian homes land in Kona, either. These lands should be opened up, eliminating the $35,000 infrastructure costs of sidewalks and street lights that urban subdivisions require. That way, we can begin to alleviate the 10-, 20-, and 30-year waiting list that exists.

There must be an improvement of the State department of education in Hawaiian studies. It benefits not only Hawaiian keikis (children) but all of Hawaii's children to learn more about the culture and traditions of this land that we love. My daughter's school principal of Hilo Union School, Mrs. Yoshimasu, has told me how all of the exposed children and teachers, regardless of what nationality they may be, gain from the learning experience of the Hawaiian Kupuna (elders) Program in the schools. Knowledge and understanding makes us all a part of Hawaii.

In my capacity as Hawaiian consultant to the Federal Government through ANA, I did recommend in February 1983 that there be inclusion of Hawaiians for native American educational funding. The more understanding and knowledge we have of our identity and culture, the fewer the social problems in these islands.

In all fairness, Senator Matsunaga, you as a body must negate the fraud of the majority report of the Commission, for it adds insult to injury and compounds the injustice that my people, the people of aloha, continue to suffer on this, their native land. We hope that you have been listening with your mind, as well as your heart.

Mahalo nui loa (thank you very much).

Malama Pono (Cherish the good).

Ua Mau Ke Ia O Ka Aina I Ka Pono (The life of the land is perpetuated in righteousness).

Senator MATSUNAGA. Thank you very much, Moanikeala. You probably noticed that you were given double the time, in consideration of your traveling all the way from Hilo. And I might say that you probably were able to hitchhike—you're much prettier than the mayor—off the record.

Our next witness is Wattie Hedemann.

STATEMENT OF WATTIE K. HEDEMANN

Ms. HEDEMANN. Senator Matsunaga, Representative Akaka, I wasn't prepared to speak but I do want to give my message now.

My name is Wattie K. Hedemann. My great-grandmother was Mochi Ae. She was in the court case in 1873 claim to be first cousin to Kamehameha IV and V.

The overthrow of the Government took place in 1874 and not in 1893. Many ali'is went into hiding. Why? Many had to change their names. Why? Kalakaua was elected by less than 160 people. Much of the Hawaiians were very upset with his election. Much of the lands were sold. They claimed to Kamehameha III, IV, and V. I have my doubts. Was it sold then, or after 1874? Was it legal when it was sold? Kalakaua was elected today—unfortunate, he wasn't. He would have been impeached for the things he did at that time. Such as the opium sales exclusive to two different people. Such as the putting the islands into bankruptcy. Over $2 million when he started out $300,000, put us in debt. I feel the United States should allow our people the use of the land. We right now work 1½ days for the Federal Government, 1 day for the State, and 3 days for ourselves. In the past, the Hawaiians 1 day for the king, 1 day for the district chief of their district, and 3 days for themselves. The lands were available to them at that time. Unfortunately, they are not available at this time.

They were working the lands on a shared basis. It's very unfortunate, when I drive by this vast acreage of land unproductive that the Hawaiians do not have the use of the State lands. And working for the Federal Government, allowing the Hawaiians to utilize this land on a shared basis. As it is, we get nothing. The State gets nothing. The Federal Government gets nothing. Because they're not productive.

We want the support of the Federal Government to have the State recognize the people. And not bulldoze them out of their land or burn them off the State lands, per se. we're now asking for reparations and have the Federal Government work with the people of Hawaii to give them recognition so they know who they are.

Thank you very much.

Senator MATSUNAGA. Thank you very much.

Our last witness will be Joanie P. Kealoha.

STATEMENT OF JOANIE KEALOHA

Ms. **Kealoha**. Welcome, Commissioners, Senator, and ladies and gentlemen.

My name is Joanie Kealoha. I'm 25, blessed with two beautiful children, and I've been a resident of Hilo for almost 11 years.

I am 75 percent Hawaiian, and my children are 75 percent Hawaiian blood, as defined in the Hawaiian Homes Commission Act as amended in 1920.

I am here today in my behalf, and also I am a member of the Native Hawaiian Association, in which I have been honored the privilege of being elected secretary for 1984. The sole purpose of the Native Hawaiian Association is for the betterment of conditions for all native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920—50 percent or more Hawaiian blood.

I have been actively involved in Hawaiian activities for almost 2 years, for the Native Hawaiian Association; but this is only my second testimony. My first was when I attended this Commission's meeting in January 1982 at Waikea High School Cafetorium. I was shocked that this Commission did not schedule a meeting in Hilo, for the turnout was great, and the testimony was still being heard until 2 a.m. I should know, because I didn't talk until 1 a.m.

I would like to know why this Commission could not schedule a hearing in Hilo. After all, it's been a couple of years, now, and you don't get to say much, you know; you have to travel such a far distance. I know there's a lot of other people that would have liked to come. Some working people in Hilo who are concerned about these native Hawaiian issues and cannot come today to express their support of opinions and topics discussed in the report because of their job priority. It sure looks like you don't care about those native Hawaiians' concerns.

Senator **Matsunaga**. Before you go further, let's get the record straight. We are not members of the Commission.

Ms. **Kealoha**. Oh.

Senator **Matsunaga**. The Commission, headed by Kina'u Kamali'i, submitted a report, and we are Members of the Congress. We represented the Congress to which the Commission had submitted its report. And we are not holding hearings on the Commission's report.

We have the minority report and the majority report. The Congress has nothing to do with this.

Ms. **Kealoha**. OK, I understand.

Senator **Matsunaga**. I am here now sitting as a member of the Senate Committee on Energy and Natural Resources, which has jurisdiction over Hawaiian native claims matters. Congressman Akaka has joined me on his own volition—he doesn't have to be here, because he's not a Member of the Senate. He's a Member of the House. But he is sitting here with me as a honorary member pro tempore of the Senate committee. Some day he may be a member of the Senate.

Ms. **Kealoha**. OK, thank you for the clarification.

After studying the Native Hawaiians Study Commission report, on the culture, needs, and concerns of the native Hawaiians, volumes I and II, the fact still remans that the native Hawaiians today is still a poor and indigenous race of people who are being used as collateral by the State and other organizations.

The native Hawaiians are the richest people in the State. Yet they are the poorest, because I feel that this Commission report chooses to ignore us, and our comments and our opinions. Your report—not your report, but the Commission's report—lists documentations, charts, and tables to provide a broad basis to your topics. But their research and analysis leaves much to be desired. The native Hawaiian not only lost his culture, but their needs are being neglected, and their concerns are heard by many—but where does it go?

I feel that this report has great potential to sit in a file or in a basement of a closed library, just like all the other reports and oral testimonies that have been conducted throughout the years to try to help rehabilitate the native Hawaiians.

We don't want just to feel compassion. We want what the laws legally provided for us. And that is, the two trusts—Hawaiian Home Lands, and money from the 5(f) section of the Admission Act. Native Hawaiians have been used and abused for generations, but today the younger ones are getting smarter, and their expressive statements are now being voiced in volume.

I do not approve or support volumes I and II because I do not believe that all the facts are true and correct. To me, this report isn't worth the paper it's written on, and it's also a waste of their time, because they overlook the topic of rehabilitation or self-sufficiency for me, the native Hawaiian.

I hope that they will review it and their comments, you know, can help us, the native Hawaiians, those that are not beneficiaries of the Hawaiian homes land or the money.

And also I'd like to say that I didn't prepare a written report, really—it's because I haven't had the skills to do it, you know; like, other people, they have opportunities to get to work programs and things like that. And I feel that sometimes the Hawaiians are always being neglected because, like for instance, when we had a person here talking in Hawaiian—there's no translator sitting here so the reporter could, you know, take back some of his message. Whereas, I feel, other hearings like this, where they have translators for Japanese, Chinese—what happened to the Hawaiians? We got lost somewhere.

And I just hope that this Commission will listen to the small, grassroots people, because it seems as if we're not being heard any more. We're just talking and losing our breath, over and over again.

Thank you very much.

Senator MATSUNAGA. Thank you. Thank you very much, Joanie.

And I'm glad you came all the way from Hilo to testify, because it's an indication that you, at least, have not given up—that you still want to be heard. And that's good, because—let me cite you just one example of how long it takes for reparations.

When I was first elected to the Congress of the United States, nearly 22 years ago, I introduced a bill to establish a U.S. Academy of Peace, along the same lines of the military academies. Everybody is for peace. You can't find anybody who will say, especially among the Members of Congress, "I'm not for peace." Everybody's for peace.

But when I first introduced the bill, 21 years ago, I could get only 5 cosponsors of the 434 other Members of the House.

And then when I got to the Senate in 1976, I reintroduced the bill and of the 100 Members, I could get only 2 cosponsors: Senator Hatfield of Oregon, and Senator Jennings Randolph of West Virginia.

And finally, after 20 years of working on that one bill—for peace, mind you—I got it out of the Senate committee. And then the leadership failed to schedule it for floor action. So earlier in this Congress, that's September, again, the committee reported the bill out—and the bill has been pending on the Senate floor now since September of last year, with no assurance of the Senate ever acting. That is the 21st year that I've been working on that one bill.

The first time that any bill was introduced in the Congress to redress a wrong done to the native Hawaiians was in 1974. It's 10 years now, as I've stated in my opening remarks, that I've been working on this. And Congressman Akaka has been working on it ever since he was elected to the House of Representatives, 8 years ago. Things take time. This is one of the things that we long to do, to expedite matters, to expedite justice which has been long overdue.

In closing, I wish to thank each and every one of you for your presence, and especially those who have testified, because to me, regardless of how long I've been working on this issue, it's been educational to me to sit here and to listen to my good people who have been sending me to the Congress now for more than 21 years. This is my 22d year.

And rest assured that so long as I am able to, and so long as the good Lord will permit me to, I will be fighting on your side.

Mr. Akaka. I, too, want to say, Mahalo Nui Loa to all of you for participating in today's hearings, especially to those who had to travel so far; but that shows your commitment.

I also want to thank Senator Matsunaga for his commitment to this cause, and for chairing and scheduling the hearings in the islands, so that we can refute the report, volume I of the Commission. To me, that's a big point. That is the reason that we are here—as mentioned by the Senator—to collect all of the evidence that we can from the grassroots people.

We hope that when this is completed we can then take some action in Congress. I can and I know the Senator can tell you how difficult it is to work in Congress and get things accomplished fast. Many times we are criticized—"Why don't you pass it!" I want to tell that person, "You go up there and try." There are only 4 of us among 535 Members, and things get passed by votes.

In the House, to get something passed, I need more than 218 votes. Cec and I can vote yes, but if the rest of the Members vote no, we lose. This is why it is so difficult. This is why we have to—I like to use the word, "orchestrate." This is part of orchestration, to come here—we listen to all of you and get all the evidence. Then we go back, we pass this on, as the Senator's going to have to do to the committee—convince the committee that volume I is wrong.

And then we'll have to get a bill in the Senate and the House, in favor of the second volume. This is going to take time and conditions.

But I thank you for being part of today's proceedings so that we can do our job there for you.

Sparky mentioned, it takes time. And of course it does. But as we mentioned, we want to expedite. We're going to try to do that the best we can. And if you know, in orchestrating something, time makes a difference. The time of the year, and the time of the Nation, and there are times when it's best, when you can move something. There are times when you had better not try. I think you would agree with us that we don't want to just go, just for the sake of turning around to tell you, "Oh, we put it in." Then when it comes up, we lose. We want to orchestrate it so we win. You understand what we're trying to do? Just like a basketball game. They want to go in with a plan to win, and by halftime they are losing. So what we are going to do there, is to change their minds. To orchestrate the different things so that they can take advantage of the weaknesses and the strengths, and win it.

This is something that we're going to have to do, and work out, while we're in Congress. I just wanted to give you a feel of what we have to go through, after all of these hearings are done.

Mainly, I want to say, Mahalo Nui Loa. You've been a great help, and you will help all of us in our work to help you.

Mahalo.

Senator MATSUNAGA. Mahalo.

The committee stands in recess until tomorrow morning.

[Whereupon, the hearing recessed, to reconvene Wednesday, April 18, 1984, Wailuki, HI.]

NATIVE HAWAIIANS STUDY COMMISSION

WEDNESDAY, APRIL 18, 1984

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Waikluki, HI.

The committee met, pursuant to notice, at 10:30 a.m., in the county council chambers, Hon. Spark M. Matsunaga, presiding.

Present: Senators Matsunaga and Inouye, and Representative Akaka.

Also present: James P. Beirne, counsel; Becky Barbour and Nora Melnick, staff assistants.

OPENING STATEMENT OF HON. SPARK M. MATSUNAGA, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator MATSUNAGA. Thank you very much, Ed Kaiwi, for your conch shell and nose flute blowing; and thank you, Tisa Kalili for your ole.

The committee will now please come to order. I apologize for the delay, but we've been waiting for Congressman Akaka to arrive. We just got word that his plane has been delayed. And Senator Inouye, too, was slightly delayed because his plane was delayed an hour. Fortunately he's here with us, and I'm happy to have Senator Inouye sitting with me as honorary member pro tempore of the Senate Energy and Natural Resources Committee. And Congressman Akaka will join us later.

As has been reported by the press, this is the third of a series of hearings that the Senate Committee on Energy and Natural Resources has been conducting throughout Hawaii on the Report of the Commission of the Native Hawaiian Claims. And we have two reports, one of the majority and one of the minority. And the hearings today will focus on the difference between the majority and the minority reports. And hopefully the witnesses today will come forth with their analysis of what they think about the majority report, as well as the minority report, and give us their preference and recommendations, if any.

At the outset, before we proceed, however, let me give you a brief history of the events that led us to these hearings, in order that I may set the tone for the hearing.

On December 4, 1980, the U.S. Senate unanimously adopted an amendment to establish the Native Hawaiians Study Commission, which I offered in my behalf and Senator Inouye's behalf, to a House-passed bill. The amendment was offered just 25 minutes before the Senate adjourned sine die and just about 1 minute before the House adjourned sine die. They adopted the Senate amendment to a 1-page bill, and our amendment was 40 pages long. So you can see how we legislate in the Congress sometimes; the amendments are much, much longer and sometimes of greater significance than the original bill itself.

The amendment had a long and interesting legislative history, dating back to 1974 when I introduced in the House a bill providing for the direct settlement of native Hawaiian claims. My bill, which was cosponsored by then-Congresswoman Patsy T. Mink, was reintroduced in early 1975 and hearings were held on it during the 94th Congress by the House Committee on Interior and Insular Affairs. Those hearings, which were held in Hawaii, were well-attended, as some of you know; and helped to focus the attention of Congress on the facts surrounding the overthrow of the Hawaiian monarchy in 1892 and the seizure of lands belonging to the crown and the Hawaiian people. In addition, the hearings raised further questions about whether or not compensation should be provided; in what form such compensation should be; how it should be distributed, and the definition of the term, "native Hawaiian."

Because of these valid questions, the U.S. Senate adopted a different approach. In December of 1975, Senator Inouye introduced Senate Joint Resolution 155, which sought congressional acknowledgment of the wrongs done to native Hawaiians. It also called for the establishment of a Hawaiian Native Claims Settlement Study Commission with a board mandate to conduct a comprehensive study of the questions relating to native Hawaiians. Senate Joint Resolution 155 was referred to the Senate Interior Committee, now the Energy and Natural Resources Committee, and after due consideration, it was favorably reported, late in the 94th Congress, near the end of 1976.

In 1977, when I took my seat in the Senate, Senator Inouye and I introduced Senate Joint Resolution 4, providing for a study of native Hawaiian claims. A similar measure, House Joint Resolution 526, was introduced by Congressmen Akaka and Cec Heftel in the House. Our Senate bill passed the Senate unanimously in October 1977, but it failed in the House of Representatives and was recommitted for further consideration to the House Interior Committee. During the remainder of the 95th Congress, the four members of the Hawaii congressional delegation worked hard to convince the Members of the House who had voted against the resolution, and the amendment adopted in 1980 was the result of these joint efforts, although it was in the form of a compromise. The resolutions strong preamble, acknowledging the U.S. role in the overthrow of the Hawaiian monarchy, was deleted, and the Commission was limited to 9 members—originally we had called for 15. And only three of the nine members was to be from Hawaii. In addition, the Commission's mandate was broadened to include a study of the culture, needs, and concerns of native Hawaiians.

The nine-member study Commission was appointed by President Carter, but summarily dismissed and replaced by President Reagan with his own appointees. Now, this new Commission held its first meeting in September of 1981. As required by law, it filed its report, including its findings and recommendations, in June of 1983. Under the provisions of Public Law 96-565, the U.S. Senate Committee on Energy and Natural Resources and the House of

Representatives Committee on Interior and Insular Affairs have jurisdiction over the Report of the Native Hawaiians Study Commission; and it is the responsibility of these two committees to review the report and recommend to the Congress what action should be taken, if any, with respect to the Commission's findings and recommendations. Now, these hearings today are the first step in the process which we hope will result in the introduction of appropriate legislation addressing the Commission's recommendations.

Although a unanimous report was desired by all nine members of the Native Hawaiian Study Commission, substantial disagreement arose over the Commission's methodology, and its analysis of the facts surrounding the overthrow of the Kindgom of Hawaii, and the consequences of the so-called Revolution of 1893, and land tenure in Hawaii prior to the overthrow of the Hawaiian monarchy. Citing the "fatal flaws" in the Commission's report of the majority, the three Hawaiian members of the Commission, Kina'u Kamali'i, who served as its chairperson, Rodger Betts and Winona Beamer, filed a supplemental report with 14 additional recommendations. While the majority of the commissioners found that native Hawaiians were in need of specific types of Federal assistance and recommended increased aid for education, employment opportunities, and health, they found the U.S. Government blameless in connection with the overthrow of the Hawaiian monarchy, and further found no legal basis for Federal action to redress the historic claims of Hawaiians stemming from the events of 1893.

The Commission's minority, however, recommended, among other things:

That the Congress pass a joint resolution clearly acknowledging the role and actions of the United States in the overthow of the Kingdom of Hawaii and indicating a congressional commitment to grant restitution for the losses suffered by native Hawaiians—"native Hawaiian" to mean any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1774. This definition was another recommendation of the minority commissioners, and which we have found in previous hearings to constitute some controversy. And these are the issues, and others, which we would like the witnesses today to focus on.

Now, the three Hawaiian commissioners concluded on the basis of their study, that while the situation of native Hawaiians is unique and exactly not like that of other Native Americans, native Hawaiians have a moral basis for compensable claims in the loss of land rights and interests vested in the domain and dominion of the Kindgom of Hawaii; and that these "claims of conscience," as the minority called it, should be addressed by the Congress. Witnesses have been asked to comment on the findings and recommendations of the minority report.

The testimony of the witnesses today, I am sure, will help the members of the committee to decide what to do, and hopefully to recommend that the recommendations of the minority be implemented into law, instead of that of the majority.

Before I call upon the first witness, I wish to call on Senator Inouye for any opening remarks which he may have. Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator INOUYE. Thank you very much, Mr. Chairman. I appreciate the opportunity to participate in these hearings. Anyone who is acquainted with the history of Hawaii, even on a very casual basis, would soon learn after reading the conclusions and findings of volume I that these findings were not based on fact. In fact, it is a gross misinterpretation and a gross distortion of the history of Hawaii. I believe the majority members of the Commission lost all credibility when it concluded that the U.S. Government played no role in the overthrow of the legitimate and sovereign country and its legitimate sovereign, Queen Liliuokalani. It furthermore shows very clearly that the Commission members lack the sensitivity and concern which would be necessary to truly and fully understand the plight, the culture and problems of native Hawaiians. I think this shows throughout this report.

What is at stake, I believe, is not just the reparations that some are seeking, not just the apology that we seek from the Government of the United States, but the honor of this country. What is at stake is the national honor. I think the time has come for those who are in high places in our Government to read the report, accept the facts, and do what has been necessary all this time. When a wrong has been committed, a good person always admits that wrong. I've always felt that my country was a good country, and I'm confident that it will admit it's wrong.

Before closing, I think it would be most appropriate if we recognize that we are here because of the work of many people, but I'd like to single out one person, and that is Kina'u Kamali'i. If it weren't for her leadership, and if it weren't for her courage and clarity in drafting this document of historic proportions—the minority report—I don't think we would have had the understanding of that period as we do today. It was a fine job of research; it was a fine job of drafting; it was an excellent job of presentation. And I want to be one who would say, thank you very much, mahalo, Kina'i.

Senater MATSUNAGA. We're fortunate to have with us also an honorary member pro tempore of the committee, the one and only native Hawiian serving in the Congress of the United States—the Honorable Daniel K. Akaka.

STATEMENT OF HON. DANIEL K. AKAKA, A U.S. REPRESENTATIVE FROM THE STATE OF HAWAII

Mr. AKAKA. Thank you very much, Mr. Chairman, Mr. Mayor, Councilpersons, friends of Maui, aloha. I'm happy to be here, delighted and proud to be among you here on Maui, delighted because of the turnout that is here this morning, and proud to be able to serve you and the people of Hawaii in the Halls of Congress.

I want to say mahalo nui to Senator Matsunaga and Senator Inouye as well as to my colleague, Cec Heftel, for the work that has been done in Congress thus far. We know that what has happened is a prologue, and we're looking forward to some tough times in the Congress in carrying forward our cause.

I also want to associate myself with the remarks of Sparky and of Dan Inouye in relation to the Commissioners Kina'u Kamali'i, Rodger Betts, and Winona Beamer, and the position that they took in standing against the majority. As we all know, it was tough, and I call them champions for the cause of Hawaii.

The purpose of our gathering here today is to collect evidence through your testimony as to your feelings of the volume I and volume II of the Native Hawaiians Study Commission report. We have heard for 2 days excellent testimony. I have remarked that over the years that I've served in Congress, over the years that I've attended hearings in Hawaii, that the quality of the testimonies have really improved. The people here have done good research, they've spoken to the point and have given us here who sit listening some good education in what they want to convey to us and to the Congress. I commend all of you for this. The collection of this testimony is very, very important to us. As I said, we will have to carry this forward; and I'm sure you know, but I'll reiterate, that whatever happens in the Halls of Congress, whatever happens to our cause depends not only on you, not only on the four of us, but really on those who are non-Hawaiian Members of Congress. These are the folks we have to convince and persuade that volume I was wrong, and that volume II should prevail.

So as we listen to you today, and we listen to your mana'o, we look forward to your mana'o and carrying and conveying it to our friends in the Congress with the hope that our cause will prevail. There is no question that the four of us who are serving you in Congress are committed and convinced to this cause. We must therefore take what you give us and go to our friends in the Senate and the House to get their help. We look forward to your mana'o today, and I thank you very much for your presence. Mahalo.

Senator MATSUNAGA. Thank you, Congressman Akaka. And now we will call upon the first witness, the Honorable Hannibal Tavares, mayor of the county of Maui, and as he is going to the podium, in behalf of the committee I wish to thank you for making available the facilities of your county and for all the assistance you have given us in setting these hearings. May we hear from you, Mr. Mayor.

STATEMENT OF HANNIBAL TAVARES, MAYOR, COUNTY OF MAUI

Mayor TAVARES. Mr. Chairman, Senators, and Mr. Representative, Maui County is thrilled to have you with us today to listen to what Maui County has to say on this very urgent and important matter.

My name is Hannibal Manuel Tavares. I appear before you today as an American. A citizen of the State of Hawaii, and in particular, the county of Maui, of which I am the mayor.

I was born and raised in Hawaii. I love Hawaii and all its people. Like all people born and raised in Hawaii, I was always aware that somehow the native Hawaiian had been unfairly dealt with by our country, the United States of America. It was perhaps mostly suspicion. It was difficult to get at the facts. We were never taught at our public schools or private schools, for that matter, the hows, the whats or the wheres of what happened in 1893. In fact, all we were taught was that President Dole, the president of the Provisional Government and the president of the so-called Republic of Hawaii, had saved us from the tyranny of the Queen and had brought us democracy. This was, of course, difficult to believe, but as I have already mentioned, what else was there to believe?

Several years ago for the first time, the actual facts surrounding the overthrow of the Hawaiian monarchy and the subsequent annexation by the United States of America of the Hawaiian Islands, came to light. I have since read books, treatises and papers written on the subject. I have also attended hearings, seminars and public discussions on the matter of the Hawaiian native claim. I have read volumes I and II of the Report of the Native Hawaiian Study Commission.

My former, unenlightened awareness or suspicions were confirmed by my new knowledge. As a matter of fact, in my unenlightened awareness, I never imagined that the actions of my country could be so contrary to all that we as a nation stood for. The flagrant abuse of office by American officials; the violation of our sacred concepts of justice and fair play.

I an not a lawyer or an historian. I don't believe you have to be one to know that the majority report which denies responsibility of the United States for the wrongdoings of its officers and agencies that resulted in the overthrow of the lawful government of the Hawaiian monarchy is an absurdity.

In my opinion, the minority dissenting report, volume II, which finds the United States culpable and responsible for the overthrow is the proper finding. Not to include the views of the minority report in any legislation you can consider relating to the culture, needs and concerns of native Hawaiians would in my mind be an avoidance of the truth. It seems to me that we have had too much of that kind of coverup on this whole tragic episode for too long now. Even now it rears its ugly head in the findings of the majority report.

I am not a native Hawaiian. I am pure Portuguese. I admire and respect the Hawaiians. I feel a great aloha for them. They have suffered a great wrong. The time has come to remedy that wrong. The time has come for our country to vindicate its honor and its conscience by an earnest effort to make all possible reparation.

Thank you very much.

Senator **Matsunaga**. Thank you very much, Mayor Tavares, for your words of conviction.

Before I call upon the next witness, you may have heard a buzzer go off. You see that light on the front desk. There's a red light, and there's a green light. It's a signal for the witness to summarize when the red light comes on in half a minute or at the most a minute. However, if you still have something very important which you feel the committee ought to hear, then you may proceed an additional minute. But your full statement, which you will present in writing, will appear in the record; so that the members of the committee back in Washington will have an opportunity to read your entire statement. So this is merely to stay within the allotted time that we have in holding these hearings.

So our next witness is Hon. Abraham Aiona, councilman of the county of Maui.

Abe, we'd be happy to hear from you.

STATEMENT OF ABRAHAM AIONA, MEMBER, MAUI COUNTY COUNCIL

Mr. Aiona. Aloha, Senators Matsunaga and Inouye, and Representative Akaka. Thank you for coming to Maui, to give us the opportunity to voice our views on the Report of the Native Hawaiian Study Commission. I am Abraham Aiona, serving my fourth term as a member of the Maui County Council and chairman of the council subcommittee to review the Native Hawaiian Study Commission Report.

I am a native Hawaiian, three-fourths Hawaiian blood and one-fourth Chinese. I am a World War II veteran and served with the 508th Parachute Infantry Regiment of the 82d Airborne Division. I was a volunteer.

Prior to entering the political arena, I served as a police officer with both the Honolulu Police and Maui Police Departments for 29 years; 22 years and 3 months with the Honolulu Police Department, and 6 years and 9 months as chief of police for the county of Maui, retiring on April 30, 1976.

This morning, I speak on behalf of the entire county council. We felt the issues raised by the Native Hawaiian Study Commission's final report were of such importance, not only to the people of Hawaiian ancestry, but to all the citizens of Hawaii, that the Maui County Council appointed a subcommittee specifically to study the findings and recommendations of that report. Our subcommittee, after intensively studying both volume I and volume II drafted several resolutions to be adopted by the county council as a whole. I think you should know that the resolutions which were finally adopted were unanimously agreed upon by all members of the Maui County Council.

These resolutions, I understand, have been adopted by other legislative bodies and private organizations within the State of Hawaii. I think that this shows the almost unanimous support within the State for the recommendations and findings of volume II of the report. Attached to my testimony are the six resolutions adopted by the county council addressing the issues raised in the Native Hawaiian Study Commission's final report.

I would like to speak to each of these resolutions separately. The first resolution I would call to your attention urges this committee to formally reject certain sections of volume I. We feel that volume I evidences a closed and sometimes hostile attitude toward the entire mission of the study Commission. Rather than an open, honest, and compassionate approach to the concerns of native Hawaiians, volume I shows a lack of understanding and support which is glaring. Volume I misinterprets Hawaiian history and selectively uses legal principles in order to deny a basis for the reparations claims. It does a great injustice to the entire purpose of the study Commission, and it does a great injustice to the Hawaiian people.

The second resolution was adopted by the council last year. It urges Congress to acknowledge the actions of the United States with regard to the overthrow of the Kingdom of Hawaii in 1893.

I think it is ironic that the study Commission's volume I clearly admits that U.S. agents and the U.S. Minister to Hawaii were involved in the overthrow of the Hawaiian monarchy, but denies the culpability of the United States on the theory that the U.S. agents acted without the express authority of the President or Congress. Volume I bases its conclusion that reparations should not be awarded, on the legal nicety that there was no "authorized involvement by the United States" and that the role of U.S. forces in the overthrow was a limited one. However, as members of this committee, our review of the same factors led my subcommittee to conclude that the involvement of U.S. Minister John Stevens was crucial to the success of the rebellion, that he refused to remain neutral in the domestic affairs of the Kingdom of Hawaii, and instead became an active agent in the planning and support of the insurrection by ordering the landing and placement of American marines in Honolulu. It is clear to us that without such armed American support, the rebellion would have failed for lack of arms and lack of popular support. Authorities may quibble over this last part of our findings—in other words, that the insurrection would have failed without American support—and it is true that no one can accurately predict what would have happened if there hadn't been American support for the rebellion.

Of course, we will never know whether the rebellion would have been successful, without support of American troops. But, that is the very issue which volume I fails to address. Native Hawaiians will never have a chance to know what would have happened without American intervention. This, to my mind, is a crucial point. We don't know whether the insurrection would have been successful without American aid; we don't know whether, on the other hand, Government troops would have been able to overcome the insurrection; we don't know whether the dispute between the Committee of Safety and the Government could have been resolved without use of arms. We don't know these things because Minister Stevens, other American agents, and U.S. troops stepped in and totally altered the situation.

Whether these acts were expressly authorized or not is almost a moot point. Given the methods of communication of that day, the long periods of time it took to convey information across the United States, the distance from Hawaii to Washington, it would be entirely reasonable for anyone in Hawaii to assume that the actions of the U.S. Minister to Hawaii were indeed sanctioned by the U.S. Government. He was the official representative of the United States.

I'd better try to close it, Senator, very quickly. We did conclude that there were some necessary changes that needed to be made, and one is in the blood quantum, because it is one area that we were very concerned about. And our resolution that was passed also covers that, in particular. So that the benefits to our Hawaiians would be to all part-Hawaiians, regardless of the amount of blood.

I do want to say, thank you for coming; the people on Molokai mentioned to us last night that you folks are not going to Molokai, however, I indicated I would testify on behalf of Maui County Council and Maui County.

Thank you very much.

[The prepared statement of Mr. Aiona follows:]

TESTIMONY FOR THE UNITED STATES SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, WEDNESDAY, APRIL 18, 1984, MAUI COUNTY COUNCIL CHAMBERS, WAILUKU, HAWAII

ALOHA NOU, SENATOR MATSUNAGA AND MEMBERS OF THIS COMMITTEE:

THANK YOU FOR COMING TO MAUI TO GIVE US THE OPPORTUNITY TO VOICE OUR VIEWS ON THE REPORT OF THE NATIVE HAWAIIAN STUDY COMMISSION. I AM ABRAHAM AIONA, SERVING MY FOURTH TERM AS A MEMBER OF THE MAUI COUNTY COUNCIL, AND CHAIRMAN OF THE COUNCIL'S SUBCOMMITTEE TO REVIEW THE NATIVE HAWAIIANS STUDY COMMISSION REPORT.

I AM A NATIVE HAWAIIAN WITH THREE-FOURTHS HAWAIIAN BLOOD AND ONE-FOURTH CHINESE. I AM A WORLD WAR II VETERAN AND SERVED WITH THE 508TH PARACHUTE INFANTRY REGIMENT OF THE 82ND AIRBORNE DIVISION. I WAS A VOLUNTEER.

PRIOR TO ENTERING THE POLITICAL ARENA, I SERVED AS A POLICE OFFICER WITH BOTH THE HONOLULU POLICE AND MAUI POLICE DEPARTMENTS FOR TWENTY-NINE YEARS; 22 YEARS AND 3 MONTHS WITH THE HONOLULU POLICE DEPARTMENT AND 6 YEARS AND 9 MONTHS AS CHIEF OF POLICE FOR THE COUNTY OF MAUI, RETIRING ON APRIL 30, 1976.

THIS MORNING, I SPEAK ON BEHALF OF THE ENTIRE COUNTY COUNCIL. WE FELT THE ISSUES RAISED BY THE NATIVE HAWAIIANS STUDY COMMISSION'S FINAL REPORT WERE OF SUCH IMPORTANCE, NOT ONLY TO PEOPLE OF HAWAIIAN ANCESTRY, BUT TO ALL THE CITIZENS OF HAWAII, THAT THE MAUI COUNTY COUNCIL APPOINTED A SUBCOMMITTEE SPECIFICALLY TO STUDY THE FINDINGS AND RECOMMENDATIONS OF THAT REPORT. OUR SUBCOMMITTEE, AFTER INTENSIVELY STUDYING BOTH VOLUME I AND VOLUME II, DRAFTED SEVERAL RESOLUTIONS TO BE ADOPTED BY THE COUNTY COUNCIL AS A WHOLE. I THINK YOU SHOULD KNOW THAT THE RESOLUTIONS WHICH WERE FINALLY ADOPTED WERE UNANIMOUSLY AGREED UPON BY ALL MEMBERS OF THE COUNTY COUNCIL. THESE RESOLUTIONS, I UNDERSTAND, HAVE BEEN ADOPTED BY OTHER LEGISLATIVE BODIES AND PRIVATE ORGANIZATIONS WITHIN THE STATE OF HAWAII. I THINK THAT THIS SHOWS THE ALMOST UNANIMOUS SUPPORT WITHIN THE STATE FOR THE RECOMMENDATIONS AND FINDINGS OF VOLUME II OF THE REPORT. ATTACHED TO MY TESTIMONY ARE THE SIX RESOLUTIONS ADOPTED BY THE COUNTY COUNCIL ADDRESSING THE ISSUES RAISED IN THE NATIVE HAWAIIANS STUDY COMMISSIONS FINAL REPORT.

I WOULD LIKE TO SPEAK TO EACH OF THESE RESOLUTIONS SEPARATELY. THE FIRST RESOLUTION I WOULD CALL TO YOUR ATTENTION URGES THIS COMMITTEE TO FORMALLY REJECT CERTAIN SECTIONS OF VOLUME I. WE FEEL THAT VOLUME I EVIDENCES A CLOSED AND SOMETIMES HOSTILE ATTITUDE TOWARD THE ENTIRE

MISSION OF THE STUDY COMMISSION. RATHER THAN AN OPEN, HONEST, AND COMPASSIONATE APPROACH TO THE CONCERNS OF NATIVE HAWAIIANS, VOLUME I SHOWS A LACK OF UNDERSTANDING AND SUPPORT WHICH IS GLARING. VOLUME I MISINTERPRETS HAWAIIAN HISTORY AND SELECTIVELY USES LEGAL PRINCIPLES IN ORDER TO DENY A BASIS FOR THE REPARATIONS CLAIM. IT DOES A GREAT INJUSTICE TO THE ENTIRE PURPOSE FOR THE STUDY COMMISSION AND IT DOES A GREAT INJUSTICE TO THE HAWAIIAN PEOPLE.

THE SECOND RESOLUTION WAS ADOPTED BY THE COUNCIL LAST YEAR. IT URGES CONGRESS TO ACKNOWLEDGE THE ACTIONS OF THE UNITED STATES WITH REGARD TO THE OVERTHROW OF THE KINGDOM OF HAWAII IN 1893.

I THINK IT IS IRONIC THAT THE STUDY COMMISSION'S VOLUME I CLEARLY ADMITS THAT U.S. AGENTS AND THE U.S. MINISTER TO HAWAII WERE INVOLVED IN THE OVERTHROW OF THE HAWAIIAN MONARCHY, BUT DENIES THE CULPABILITY OF THE UNITED STATES ON THE THEORY THAT THE U.S. AGENTS ACTED WITHOUT THE EXPRESS AUTHORITY OF THE PRESIDENT OR CONGRESS. VOLUME I BASES ITS CONCLUSION THAT REPARATIONS SHOULD NOT BE AWARDED, ON THE LEGAL NICETY THAT THERE WAS NO "AUTHORIZED INVOLVEMENT BY THE UNITED STATES" AND THAT THE ROLE OF U.S. FORCES IN THE OVERTHROW WAS A LIMITED ONE. HOWEVER, AS MEMBERS OF THIS COMMITTEE, OUR REVIEW OF THE

SAME FACTORS LED MY SUBCOMMITTEE TO CONCLUDE THAT THE INVOLVEMENT OF U.S. MINISTER JOHN STEVENS WAS CRUCIAL TO THE SUCCESS OF THE REBELLION, THAT HE REFUSED TO REMAIN NEUTRAL IN THE DOMESTIC AFFAIRS OF THE KINGDOM OF HAWAII, AND INSTEAD BECAME AN ACTIVE AGENT IN THE PLANNING AND SUPPORT OF THE INSURRECTION BY ORDERING THE LANDING AND PLACEMENT OF AMERICAN MARINES IN HONOLULU. IT IS CLEAR TO US THAT WITHOUT SUCH ARMED AMERICAN SUPPORT, THE REBELLION WOULD HAVE FAILED FOR LACK OF ARMS AND LACK OF POPULAR SUPPORT. AUTHORITIES MAY QUIBBLE OVER THIS LAST PART OF OUR FINDINGS - IN OTHER WORDS, THAT THE INSURRECTION WOULD HAVE FAILED WITHOUT AMERICAN SUPPORT - AND IT IS TRUE THAT NO ONE CAN ACCURATELY PREDICT WHAT WOULD HAVE HAPPENED IF THERE HADN'T BEEN AMERICAN SUPPORT FOR THE REBELLION. OF COURSE, WE WILL NEVER KNOW WHETHER THE REBELLION WOULD HAVE BEEN SUCCESSFUL WITHOUT SUPPORT OF AMERICAN TROOPS. BUT THAT IS THE VERY ISSUE WHICH VOLUME I FAILS TO ADDRESS. NATIVE HAWAIIANS WILL NEVER HAVE A CHANCE TO KNOW WHAT WOULD HAVE HAPPENED WITHOUT AMERICAN INTERVENTION. THIS, TO MY MIND, IS THE CRUCIAL POINT. WE DON'T KNOW WHETHER THE INSURRECTION WOULD HAVE BEEN SUCCESSFUL WITHOUT AMERICAN AID; WE DON'T KNOW WHETHER, ON THE OTHER HAND, GOVERNMENT TROOPS WOULD HAVE BEEN ABLE TO OVERCOME THE INSURRECTION; WE DON'T KNOW WHETHER THE DISPUTE BETWEEN THE COMMITTEE OF SAFETY AND THE GOVERNMENT COULD HAVE BEEN RESOLVED WITHOUT USE OF

ARMS; WE DON'T KNOW THESE THINGS BECAUSE MINISTER STEVENS, OTHER AMERICAN AGENTS, AND U.S. TROOPS STEPPED IN AND TOTALLY ALTERED THE SITUATION.

WHETHER THESE ACTS WERE EXPRESSLY AUTHORIZED OR NOT IS ALMOST A MOOT POINT, GIVEN THE METHODS OF COMMUNICATION OF THAT DAY, THE LONG PERIODS OF TIME IT TOOK TO CONVEY INFORMATION ACROSS THE UNITED STATES, THE DISTANCE FROM HAWAII TO WASHINGTON, IT WOULD BE ENTIRELY REASONABLE FOR ANYONE IN HAWAII TO ASSUME THAT THE ACTIONS OF THE U.S. MINISTER TO HAWAII, WERE INDEED SANCTIONED BY THE UNITED STATES GOVERNMENT. HE WAS THE OFFICIAL REPRESENTATIVE OF THE UNITED STATES TO HAWAII, AND EVEN IF HIS ACTIONS AT A LATER POINT IN TIME HAD BEEN REPUDIATED BY THE HARRISON ADMINISTRATION (AND THEY WERE NOT) IT MADE A SMALL DIFFERENCE TO THE REALITY OF AMERICAN TROOPS IN HAWAIIAN SOIL AND THE REALITY FACED BY NATIVE HAWAIIANS IN HAWAII.

THE ACTIONS OF AMERICAN AGENTS ULTIMATELY CULMINATED IN THE ASSERTION BY THE REPUBLIC OF HAWAII OF OWNERSHIP OVER THE CROWN AND GOVERNMENT LANDS OF THE KINGDOM AND THE EVENTUAL CESSION OF THESE LANDS TO THE UNITED STATES BY THE REPUBLIC. THE RESOLUTION ADOPTED BY THE COUNTY COUNCIL MERELY REQUESTS THAT CONGRESS INDICATE ITS COMMITMENT TO GRANT RESTITUTION - IT MERELY REQUESTS JUSTICE.

I WOULD LIKE TO VERY BRIEFLY OUTLINE THE OTHER FOUR RESOLUTIONS ADOPTED BY THE MAUI COUNTY COUNCIL:

1) THE FIRST ONE URGES CONGRESS TO INCLUDE NATIVE HAWAIIANS IN THE DEFINITION OF NATIVE AMERICANS. THE PURPOSE OF THE RESOLUTION IS TO PERMIT NATIVE HAWAIIANS TO PARTICIPATE IN THOSE PROGRAMS ESTABLISHED BY THE FEDERAL GOVERNMENT FOR THE BENEFIT OF OTHER NATIVE AMERICAN PEOPLE. THE FEDERAL GOVERNMENT HAS LONG RECOGNIZED NATIVE HAWAIIANS AS A DISTINCT INDIGENOUS GROUP. THIS IS EVIDENCED, FOR INSTANCE, BY THE ENACTMENT BY THE HAWAIIAN HOMES COMMISSION ACT; BY INCLUSION OF NATIVE HAWAIIANS AS ELIGIBLE FOR PARTICIPATION IN PROGRAMS OF THE ADMINISTRATION FOR NATIVE AMERICANS; BY INCLUDING NATIVE HAWAIIANS IN THE INDIAN MANPOWER PROGRAM; AND BY INCLUDING HAWAIIANS IN THE PROVISIONS OF THE AMERICAN INDIANS AND RELIGIOUS FREEDOM ACT. WE URGE THAT CONGRESS NOW ADOPT A CONSISTENT POLICY, INCLUDING NATIVE HAWAIIANS IN ALL NATIVE AMERICANS PROGRAMS.

2) THE SECOND RESOLUTION URGES CONGRESS TO ESTABLISH A JOINT FEDERAL-STATE CEDED LANDS COMMISSION TO REVIEW THE STATUS AND NEED FOR FEDERALLY CONTROLLED LANDS IN THE STATE OF HAWAII. AS YOU MAY KNOW, AT THE TIME OF ANNEXATION, APPROXIMATELY 1.7 MILLION ACRES OF CROWN AND GOVERNMENT LANDS WERE CEDED TO THE UNITED STATES

BY THE REPUBLIC OF HAWAII. THESE LANDS WERE ADMINISTERED BY THE TERRITORIAL GOVERNMENT AND WERE TO BE USED FOR THE BENEFIT OF THE INHABITANTS OF THE HAWAIIAN ISLANDS. IN RECOGNITION OF THIS TRUST IMPRESSED UPON THESE LANDS, IN 1959 WHEN HAWAII BECAME A STATE, THE FEDERAL GOVERNMENT CEDED THOSE LANDS BACK TO THE STATE. HOWEVER, CERTAIN PROVISIONS WERE ENACTED IN OUR ADMISSION ACT ENABLING LANDS RETAINED BY THE FEDERAL GOVERNMENT TO BE RETURNED TO THE STATE OF HAWAII. WE BELIEVE CONGRESS INTENDED THAT ALL LANDS CONTROLLED BY THE FEDERAL GOVERNMENT WHICH WERE PART OF THE LAND CEDED BY THE REPUBLIC OF HAWAII WOULD BE SUBJECT TO RETURN AND INCORPORATION IN THE TRUST LANDS OF THE STATE OF HAWAII. IN THE 24 YEARS SINCE STATEHOOD, LESS THAN 600 ACRES OF FEDERALLY CONTROLLED CEDED LANDS HAVE BEEN RETURNED. WE URGE CONGRESS TO ESTABLISH A COMMISSION TO REVIEW THE PRESENT STATUS, USE, AND POSSIBLE RELEASE OF FEDERAL CONTROLLED LANDS IN HAWAII.

3) OUR THIRD RESOLUTION URGES CONGRESS TO REVIEW THE RECOMMENDATIONS OF THE JOINT FEDERAL-STATE TASK FORCE ON HAWAIIAN HOME LANDS AND WHERE APPROPRIATE, INITIATE BREACH OF TRUST OR OTHER LEGAL ACTIONS FOR NON-COMPLIANCE WITH THE RECOMMENDATIONS. THE FEDERAL-STATE TASK FORCE ON HAWAIIAN HOMES WAS

ESTABLISHED BY THE SECRETARY OF THE INTERIOR AND THE GOVERNOR OF HAWAII IN RESPONSE TO CHARGES THAT A BREACH OF TRUST HAD OCCURRED IN THE ADMINISTRATION OF THE HAWAIIAN HOMES COMMISSION ACT. THE FEDERAL-STATE TASK FORCE WAS ASKED TO MAKE RECOMMENDATIONS TO THE GOVERNOR OF HAWAII AND TO THE U.S. SECRETARY OF THE INTERIOR ON WAYS TO BETTER EFFECTUATE THE PURPOSES OF THE HAWAIIAN HOMES COMMISSION ACT. LAST YEAR, THE TASK FORCE SUBMITTED ITS FINDINGS AND 134 RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR AND GOVERNOR. HOWEVER, THE TASK FORCE CAN ONLY SEEK VOLUNTARY COMPLIANCE WITH ITS RECOMMENDATIONS. WE REQUEST THAT CONGRESS CAREFULLY REVIEW THE FINDINGS OF THE FEDERAL-STATE TASK FORCE AND WHERE APPROPRIATE, ASK THE DEPARTMENT OF JUSTICE TO INITIATE BREACH OF TRUST OF OTHER LEGAL ACTIONS FOR NONCOMPLIANCE WITH THOSE RECOMMENDATIONS.

4) THE FINAL RESOLUTION ADOPTED BY THE COUNTY COUNCIL IS ONE WHICH I FEEL NEEDS TO BE CAREFULLY CONSIDERED. THIS RESOLUTION URGES CONGRESS TO ESTABLISH A SINGLE DEFINITION FOR THE TERM "NATIVE HAWAIIAN" IN ORDER TO ELIMINATE THE BLOOD QUANTUM REQUIREMENT. PRESENTLY, ONLY HAWAIIANS WITH 50% OR MORE HAWAIIAN BLOOD ARE ELIGIBLE TO RECEIVE CERTAIN BENEFITS FROM THE DEPARTMENT OF HAWAIIAN HOME LANDS AND THE OFFICE OF

HAWAIIAN AFFAIRS. THIS RESOLUTION URGES CONGRESS TO REVIEW THAT DETERMINATION AND TO ALLOW THOSE BENEFITS TO BE AVAILABLE TO ALL HAWAIIANS REGARDLESS OF BLOOD QUANTUM. WE RECOGNIZE THAT THE ISSUE OF BLOOD QUANTUM IS ONE WHICH HAS BEEN DIVISIVE WITHIN THE HAWAIIAN COMMUNITY. AND IT IS ONLY AFTER MUCH SOUL SEARCHING THAT I PERSONALLY COULD SUPPORT THIS RESOLUTION. MY DECISION TO DO SO WAS BASED ON REALITY - TODAY THERE ARE AN ESTIMATED 43,467 PERSONS WITH 50% OR MORE HAWAIIAN BLOOD, COMPARED TO 129,322 HAWAIIANS WITH LESS THAN 50% HAWAIIAN BLOOD. I BELIEVE, AND THE MAUI COUNTY COUNCIL BELIEVES, THAT IT MAKES MORE SENSE AND IT IS MORE EQUITABLE THAT ALL HAWAIIANS, REGARDLESS OF BLOOD QUANTUM, SHOULD RECEIVE THE BENEFITS OF THE HAWAIIAN HOMES COMMISSION ACT AND THE CEDED LANDS TRUST. IT IS IMPORTANT TO POINT OUT WITH REGARD TO THIS RESOLUTION, THAT WE PROPOSE THAT THE RIGHTS AND PRIVILEGES OF NATIVE HAWAIIANS HOLDING OR WAITING FOR HAWAIIAN HOMES AWARDS BE PROTECTED. THIS PROVISION RECOGNIZES THAT THOSE NATIVE HAWAIIANS WHO ARE ENTITLED TO BENEFITS, SHOULD RECEIVE THEM BEFORE THE BENEFITS ARE OPENED UP FOR ALL HAWAIIANS.

IN CLOSING, I KNOW THAT THIS COMMITTEE WILL, THROUGHOUT THIS WEEK, HEAR MUCH TESTIMONY AND WILL BE REQUIRED TO SIFT THROUGH REAMS OF MATERIALS RELATING TO THE FACTS, HISTORY, AND CONDITIONS OF THE HAWAIIANS PEOPLE. THIS WILL BE A LONG AND TEDIOUS TASK. BUT IT IS OUR HOPE THAT FROM THIS PROCESS, THE FINDINGS AND RECOMMENDATIONS OF VOLUME I WILL BE MORE CLOSELY EXAMINED AND THE BASIC MISCONCEPTIONS AND MISINTERPRETATIONS IN THAT VOLUME WILL BE REFUTED. MAHALO FOR YOUR PATIENCE AND FOR PERMITTING ME TO TESTIFY ON BEHALF OF THE MAUI COUNTY COUNCIL. ME KE ALOHA PUMEHANA.

No 14-20 Introduced By ____________________ Councilmember

URGING THE CONGRESS OF THE UNITED STATES TO INCLUDE NATIVE HAWAIIANS IN THE DEFINITION OF NATIVE AMERICAN AND EXTEND TO NATIVE HAWAIIANS ELIGIBILITY IN ALL PROGRAMS AFFECTED BY SUCH DEFINITION WITHOUT PREJUDICE

WHEREAS, the Congress of the United States has recognized the unique attributes of indigenous American peoples as constitutionally and morally deserving of national attention and legislation; and

WHEREAS, the Congressional willingness to extend this recognition to Native Hawaiians is now imperfectly and unfairly extended; and

WHEREAS, the Hawaiian people are the indigenous inhabitants of the Hawaiian Islands; and

WHEREAS, at the time the Kingdom of Hawaii and its government was illegally overthrown in 1893, it was fully recognized as a member of the international community of nations; and

WHEREAS, Native Hawaiians were citizens of an organized self-governing nation whose status as an independent sovereign was formally recognized by other nations; and

WHEREAS, as early as 1826, a treaty was negotiated, although never ratified, between the United States and the Hawaiian Kingdom; and

WHEREAS, in 1842 American President John Tyler officially recognized Hawaii as a sovereign nation and declared a policy of respecting Hawaiian independence; and

WHEREAS, in recognition of this independence, Congress appropriated monies for the appointment of a minister from the United States to Hawaii; and

WHEREAS, the federal government has long recognized Native Hawaiians as a distinct indigenous group and has dealt with them in a manner similar to other Native American groups; and

WHEREAS, Native Hawaiians meet many of the criteria which entitle an indigenous group of federal protection and services; and

WHEREAS, the Congress of the United States explicitly acknowledged its responsibility and ability to enact legislation to benefit Native Hawaiians with the enactment of the Hawaiian Homes Commission Act of 1920, which placed over 200,000 acres of land in trust to rehabilitate Native Hawaiians; and

WHEREAS, in the 1959 Admission Act, the Congress of the United States extended the scope of the federal government's recognition of Native Hawaiians by requiring the State of Hawaii, by compact, to adopt the Hawaiian Homes Commission Act as part of the State Constitution; and

WHEREAS, the State Admission Act further recognized Native Hawaiians in Section 5(f) by designating "the betterment of conditions of Native Hawaiians" as one of the five trust purposes for which proceeds and income from the ceded lands trust could be expended; and

WHEREAS, the State Admission Act singles out Native Hawaiians from the general public as specific beneficiaries of the ceded land trust, in recognition of the federal government's recognition of the status of Native Hawaiians; and

WHEREAS, in 1974 Congress enacted legislation making Hawaiians eligible for participation in the programs of the Administration for Native Americans; and

WHEREAS, in 1978 Congress amended the Comprehensive Employment and Training Act to include Hawaiians in the Indian Manpower Program administered by the Director of Indian and Native American Programs of the U. S. Department of Labor; and

WHEREAS, in the same year the Congress adopted the American Indian Religious Freedom Act and included Native Hawaiians in its guarantees of religious tolerance; and

WHEREAS, despite their inclusion in these above-mentioned programs, the Council of the County of Maui finds that Native Hawaiians are presently ineligible to participate in the large majority of federal programs established for the benefit of other Native American peoples; and

WHEREAS, through amendments to the Hawaii State Constitution in 1978, ratified by the people of the State of Hawaii, an Office of Hawaiian Affairs was established to serve as the principal public agency in the State responsible for all Hawaiians, and to receive a pro rata share of the ceded lands and trust revenues; and

WHEREAS, the Office of Hawaiians Affairs is governed by a nine-member Board of Trustees who are elected by the Hawaiian people; and

WHEREAS, the Council of the County of Maui recognizes that Native Hawaiians share all of the attributes and needs common to other indigenous peoples and are entitled to any and all benefits extended to other Native Americans; now, therefore, BE IT RESOLVED by the Council of the County of Maui that it hereby urges the Congress of the United States to include Native Hawaiians in the definition of Native American and extend to Native Hawaiians eligibility in all programs affected by such definition without prejudice; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the Honorable George Bush, President pro tempore of the U. S. Senate; the Honorable Thomas P. O'Neil, Jr., Speaker of the U. S. House of Representatives; the Honorable James A. McClure, Chairperson of the U. S. Senate Committee on Energy and Natural Resources; the Honorable Morris K. Udall, Chairperson of the U. S. House Committee on Interior and Insular Affairs; the Honorable Daniel K. Inouye, U. S. Senator; the Honorable Spark M. Matsunaga, U. S. Senator; the Honorable Daniel K. Akaka, U. S. Representative; the Honorable Cec Heftel, U. S. Representative; the Honorable George R. Ariyoshi, Governor of the State of Hawaii; the Honorable Richard S. H. Wong, President of Hawaii's State Senate; the Honorable Henry H. Peters, Speaker of Hawaii's House of Representatives; the Honorable Joseph Kealoha, Chairman, Office of Hawaiian Affairs; Kina'u Boyd Kamali'i, Chairperson, Kaulana Na Pua Institute, Inc.; the Honorable Sandra Smoley, President of the National Association of Counties; the Honorable John Nesbo, President of the Western Interstate Region; the Honorable Jesse Fukushima, President of the Hawaii State Association of Counties; the Honorable Hannibal Tavares, Mayor of the County of Maui; the Honorable Stephen Yamashiro, Council Chairman, County of Hawaii; the Honorable Patsy Mink, Council Chairman, City and County of Honolulu; and the Honorable Raymond Duvauchelle, Council Chairman, County of Kauai.

No 84-21 Introduced By ______________________ Councilmember

URGING THE CONGRESS OF THE UNITED STATES TO ESTABLISH A JOINT FEDERAL-STATE CEDED LANDS COMMISSION TO REVIEW THE STATUS AND NEED FOR FEDERALLY-CONTROLLED LANDS IN THE STATE OF HAWAII

WHEREAS, the history and development of land tenure patterns and laws in Hawaii are truly unique and without parallel in the experience of the United States; and

WHEREAS, these historical and continuing differences are traceable, in part, to the Polynesian tradition of the Islands, the manner and nature of American annexation of Hawaii and the reflection of these forces in the terms and conditions of the Admission Act of the State; and

WHEREAS, 1.7 million acres of crown, government and public lands were ceded to the United States by the terms of American annexation by the then Republic of Hawaii; and

WHEREAS, this cession was concluded between two nations - albeit without the consent of or compensation to the people of Hawaii -- with the mutual acknowledgement that such lands would be used for the "benefit of the inhabitants of the Hawaiian Islands"; and

WHEREAS, the manner and terms of the ceded lands transfer created a public trust which cannot be abrogated or unilaterally altered without violating international law structures or the terms of a bilateral international agreement; and

WHEREAS, these conditions were discussed and recognized in the 1947 Congressional hearings on the admission of the then Territory of Hawaii as a State, and resulted in the inclusion of Section 5 in the proposed Admission Act of that year and all subsequent bills; and

WHEREAS, the final form of the Admissions Act for the State of Hawaii -- as enacted by Congress, signed by the President of the United States and ratified by the citizens of Hawaii -- acknowledged a trust which was to be maintained and managed for the benefit of all the "inhabitants" of Hawaii; and

WHEREAS, the bulk of these lands were returned in fee to the State of Hawaii in the Admission Act, with explicit trust impositions and the naming of two possible beneficiary classes: Native Hawaiians, as defined in the Hawaiian Homes Act, and the general public; and

WHEREAS, the broad public purposes enunciated as consistent with the trust could be fulfilled at the discretion of the State; however, any purpose outside those named would result in a breach of trust; and

WHEREAS, the State of Hawaii, in the State Constitution of 1978, acknowledged the beneficiary interest of Native Hawaiians and provided a pro rata share of the ceded lands revenues be set aside for the "betterment of Native Hawaiians." These funds are administered and managed by the Office of Hawaiian Affairs whose Board of Trustees are elected by all Hawaiians; and

WHEREAS, the Council of the County of Maui maintains that this trust, as a federal responsibility, was not extinguished by the Admission Act or its terms. All ceded lands set aside for national park purposes were declared fee and the property of the Department of the Interior. However, it was the intent of Congress that all other lands controlled by the federal government were subject to return and incorporation into the trust of the State of Hawaii; and

WHEREAS, this reversionary interest of the State in all non-park federal lands is now also of explicit trust interest to Native Hawaiians by the establishment of the Office of Hawaiian Affairs; and

WHEREAS, in the 24 years since Statehood, less than 600 acres of federally controlled ceded lands have been returned from a total of nearly 404,000 acres; now, therefore,

BE IT RESOLVED by the Council of the County of Maui that it hereby urges the Congress to establish a Joint Federal-State Ceded Lands Commission for the State of Hawaii, to review the present status, use and possible release of federally controlled ceded lands in Hawaii; and

BE IT FURTHER RESOLVED that this Commission advise the Congress on the status of these lands, and have the authority to declare such lands surplus and available for return to the State of Hawaii, and that Native Hawaiians be included and consulted in the course of the Commission's review; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the Honorable George Bush, President pro tempore of the U. S. Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the U. S. House of Representatives; the Honorable James A. McClure, Chairperson of the U. S. Senate Committee on Energy and Natural Resources; the Honorable Morris K. Udall, Chairperson of the U. S. House Committee on Interior and Insular Affairs; the Honorable Daniel K. Inouye, U. S. Senator; the Honorable Spark M. Matsunaga, U. S. Senator; the Honorable Daniel K. Akaka, U. S. Representative; the

Honorable Cec Heftel, U. S. Representative; the Honorable George R. Ariyoshi, Governor of the State of Hawaii; the Honorable Richard S. H. Wong, President of Hawaii's State Senate; the Honorable Henry H. Peters, Speaker of Hawaii's House of Representatives; the Honorable Joseph Kealoha, Chairman, Office of Hawaiian Affairs; Kina'u Boyd Kamali'i, Chairperson, Kaulana Na Pua Institute, Inc.; the Honorable Sandra Smoley, President of the National Association of Counties; the Honorable John Nesbo, President of the Western Interstate Region; the Honorable Jesse Fukushima, President of the Hawaii State Association of Counties; the Honorable Hannibal Tavares, Mayor of the County of Maui; the Honorable Stephen Yamashiro, Council Chairman, County of Hawaii; the Honorable Patsy Mink, Council Chairman, City and County of Honolulu; and the Honorable Raymond Duvauchelle, Council Chairman, County of Kauai.

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the foregoing resolution was adopted by the Council of the County of Maui State of Hawaii, on the __________ day of ____________________, 19____ by the following vote:

MEMBERS	Abraham AIONA	Howard S. KIHUNE Vice-Chairman	Linda LINGLE	E. Lee LIU	Ricardo MEDINA	Wayne K. NISHIKI	Charles S. OTA	Velma M. SANTOS	Goro HOKAMA Chairman
ROLL CALL									

No 84-22 Introduced By ____________________ Councilmember

URGING CONGRESS TO REVIEW THE IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE JOINT FEDERAL-STATE TASK FORCE ON HAWAIIAN HOME LANDS IN 1983, AND TO INITIATE BREACH OF TRUST OR OTHER APPROPRIATE LEGAL ACTION FOR NON-COMPLIANCE BY THE STATE OF HAWAII OR THE U. S. DEPARTMENT OF INTERIOR

WHEREAS, the Hawaiian Homes Commission Act of 1920 (HHCA) was enacted by the United States Congress on July 9, 1921; and

WHEREAS, said Act set aside over 200,000 acres of land for the rehabilitation of Native Hawaiians through a program of land awards for homesteading, ranching, and/or farming; and

WHEREAS, the Hawaiian Homes Commission Act of 1920 was implemented and administered by the Territorial government through the Hawaiian Homes Commission until the Hawaiian Islands became a State in 1959; and

WHEREAS, the Act provided that only Congress could alter or amend the beneficiary class or benefits of program, and that all non-beneficiary transfers of the lands were subject to approval by the Secretary of the United States Department of Interior provided that lands were exchanged and not lost by such transfers; and

WHEREAS, in 1959, the Admission Act of the State of Hawaii included a provision for a compact between the United States and Hawaii that the Hawaiian Homes Commission Act shall be included in the State Constitution Act as a condition of admission; and

WHEREAS, in 1959, the Department of Hawaiian Home Lands was established and title to Hawaiian Home Lands was transferred to the State of Hawaii; and

WHEREAS, the compact and transfer of title of the Admissions Act also explicitly retained the power of Congress to exercise its prerogatives and obligations as outlined in the HHCA; and

WHEREAS, provisions of the Act further vested control over the use of such lands in the Hawaiian Homes Commission and not in any other government agency; and

WHEREAS, since the passage of the HHCA, a series of 33 Executive Orders and Proclamations by Territorial and State Governors, have transferred over 30,000 acres of Hawaiian Home Lands from the DHHL's jurisdiction to other agencies, departments and individuals, without fair compensation for use or a mandated exchange of lands; and

WHEREAS, in the 60 years of the Act, less than 3,500 awards and less than 14% (a total of less than 30,000 acres) of the lands have benefited Native Hawaiians; and

WHEREAS, over 80% of the DHHL land inventory is currently leased to non-Native Hawaiians as a means of generating income for the program; and

WHEREAS, a report by the U.S. Commission on Civil Rights in 1980 and a suit by the "Hou Hawaiians" indicated that a breach of trust was inherent in such actions and conditions; and

WHEREAS, the Federal-State Task Force on the Hawaiian Homes Commission Act was jointly established by the U. S. Secretary of Interior and the Governor of the State of Hawaii on July 14, 1982, in response to such charges and as a means of redressing such violations; and

WHEREAS, the Federal-State Task Force was mandated to make recommendations to the Governor of the State of Hawaii and to the U. S. Secretary of the Interior on ways to better effectuate the purposes of the Hawaiian Homes Commission Act and to restore and accelerate the distribution of benefits of the Act to its beneficiaries; and

WHEREAS, on August 15, 1983, the Federal-State Task Force submitted its findings and 134 recommendations to the Secretary of the Interior and the Governor of the State of Hawaii; and

WHEREAS, the Task Force can only seek voluntary compliance with its recommendations; and

WHEREAS, the Governor has already publicly stated that he will not comply with those recommendations which request the State of Hawaii to rescind all set asides of DHHL lands which are not utilized for Native Hawaiians;

WHEREAS, it is the power and fiduciary responsibility of Congress to enforce those Task Force recommendations which affect the integrity of the Hawaiian Home Lands trust; and

WHEREAS, the Council of the County of Maui concurs with the recommendations and suggested actions of the Joint Federal-State Task Force as critical to a full and legal restoration of Native Hawaiian rights and benefits embodied in the language and spirit of the Hawaiian Homes Commission Act; and

WHEREAS, the Council of the County of Maui also endorses the recommendations regarding the Hawaiian Home Lands contained in Volume

II of the Final Report of the Native Hawaiian Study Commission; now, therefore,

BE IT RESOLVED by the Council of the County of Maui that it hereby urges Congress to review the implementation of recommendations adopted by the Federal-State Task Force on Hawaiian Home Lands on August 15, 1983, and to initiate breach of trust or other appropriate legal action for non-compliance by the State of Hawaii or the U. S. Department of Interior; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the Honorable George Bush, President pro tempore of the U. S. Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the U. S. House of Representatives; the Honorable James A. McClure, Chairperson of the U. S. Senate Committee on Energy and Natural Resources; the Honorable Morris K. Udall, Chairperson of the U. S. House Committee on Interior and Insular Affairs; the Honorable Daniel K. Inouye, U. S. Senator; the Honorable Spark M. Matsunaga, U. S. Senator; the Honorable Daniel K. Akaka, U. S. Representative; the Honorable Cec Heftel, U. S. Representative; the Honorable George R. Ariyoshi, Governor of the State of Hawaii; the Honorable Richard S. H. Wong, President of Hawaii's State Senate; the Honorable Henry H. Peters, Speaker of Hawaii's House of Representatives; the Honorable Joseph Kealoha, Chairman, Office of Hawaiian Affairs; Kina'u Boyd Kamali'i, Chairperson, Kauiana Na Pua Institute, Inc.; the Honorable Sandra Smoley, President of the National Association of Counties; the Honorable John Nesbo, President of the Western Interstate Region; the Honorable Jesse Fukushima, President of the Hawaii State Association of Counties; the Honorable Hannibal Tavares, Mayor of the County of Maui;

the Honorable Stephen Yamashiro, Council Chairman, County of Hawaii; the Honorable Patsy Mink, Council Chairman, City and County of Honolulu, and the Honorable Raymond Duvauchelle, Council Chairman, County of Kauai.

COUNCIL OF THE COUNTY OF MAUI
WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is **HEREBY CERTIFIED** that the foregoing resolution was adopted by the Council of the County of Maui State of Hawaii, on the ____________ day of __________________________, 19____ by the following vote:

MEMBERS	Abraham AIONA	Howard S. KIHUNE Vice-Chairman	Linda LINGLE	E. Lee LIU	Ricardo MEDINA	Wayne K. NISHIKI	Charles S. OTA	Velma M. SANTOS	Goro HOKAMA Chairman
ROLL CALL									

No 84-23 Introduced By Councilmember

URGING CONGRESS TO ESTABLISH A SINGLE DEFINITION OF NATIVE HAWAIIAN WITHOUT REFERENCE TO A BLOOD QUANTUM, AND TO PROVIDE APPROPRIATE PROTECTIONS TO GUARANTEE THE RIGHTS AND PRIVILEGES OF CURRENT HAWAIIAN HOMES BENEFICIARIES

WHEREAS, the U. S. Congress has established two definitions of a Native Hawaiian, one setting a blood quantum of 50% or more for purposes of the Hawaiian Homes Act of 1920, and the other only requiring an individual to be a descendant of those inhabiting the Hawaiian Islands prior to 1778; and

WHEREAS, it is a vital concern to the Native Hawaiian community and the Council of the County of Maui that a single definition be adopted which encourages and enhances the dignity and values of a single, unified people; and

WHEREAS, the blood quantum definition (in the words of a 1980 State Legislative Report) has "proved to be a factor in dividing the Hawaiian community, mothers and fathers from their children, cousins from cousins, and friends from friends"; and

WHEREAS, the United States Congress, pursuant to the Hawaiian Homes Commission Act, defined a Native Hawaiian to be any descendant of not less than one-half of the blood of the races inhabiting the Hawaiian Islands previous to 1778; and

WHEREAS, Congressional records reflect that in 1920 Hawaii's Delegate to Congress, Jonah Kuhio, who is most notably characterized as the "Father of the Hawaiian Homes Commission Act", advocated that there be no blood quantum but that if one were required, the definition of Native Hawaiian should be based on one-thirty second blood quantum, reflective of the widespread intermarriages among Native Hawaiians and other people of the Hawaiian Islands; and

WHEREAS, this definition of Native Hawaiian was incorporated by reference in the Admission Act of the State of Hawaii in 1959 as a qualification for benefits from Section 5(f) of the Admission Act, as provided by State law; and

WHEREAS, the Office of Hawaiian Affairs was created in 1978 as a trust for all Hawaiians and authorized, pursuant to the Constitution of the State of Hawaii, Article XII, Sections 5 and 6, to manage that pro rata share of income designated for Native Hawaiians pursuant to Section 4 of said Article and Section 5(f) of the Admission Act; and

WHEREAS, the Office of Hawaiian Affairs has encountered major fiscal and administrative hardships in managing income for two classes of Hawaiian people based on Native Hawaiian definitions enacted by Congress; and

WHEREAS, in 1974 Congress amended the Native American Program Act to include Native Hawaiians as Native Americans and, in so doing, enacted a second definition of Native Hawaiian that does not require a specific blood quantum, but merely a showing of Hawaiian ancestry to those native people inhabiting the Hawaiian Islands prior to 1778; and

WHEREAS, the State Department of Health in 1981 estimated the Native Hawaiian population to be 43,466 as compared to 129,322 for those Hawaiians who are less than 1/2 blood; and

WHEREAS, the State of Hawaii has transmitted to Congress proposed legislation to amend the definition of Native Hawaiian to 1/4 blood quantum for successors to a Hawaiian Homes Lease, which could lead to the prospect of a third definition for the purposes entitlement; and

WHEREAS, the Council of the County of Maui recognizes that the blood quantum issue is a root concern that has had a divisive effect on Hawaiian families and Hawaiian communities; and

WHEREAS, the Council of the County of Maui recognizes that self-determination is a desirable goal of Hawaiians and would be substantially achieved if ratification by Hawaiians were incorporated into any Congressional action seeking to resolve the issue of the blood quantum;

WHEREAS, Congress has reserved the power of consent to any amendments to the definition of Native Hawaiian pursuant to Admission Act Section 4; now, therefore,

BE IT RESOLVED by the Council of the County of Maui that it hereby urges Congress to give full consideration to the recommendation of the Native Hawaiian Study Commission Report Volume II which recommends that the Congress of the United States adopt a simple definition of Native Hawaiian to mean any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778, and that proper guarantees to protect the rights and privileges of those now holding or awaiting a Hawaiian Homes award accompany this change; and

BE IT FURTHER RESOLVED that copies of this resolution be transmitted to the Honorable George Bush, President pro tempore of the U. S. Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the

U. S. House of Representatives; the Honorable James A. McClure, Chairperson of the U. S. Senate Committee on Energy and Natural Resources; the Honorable Morris K. Udall, Chairperson of the U. S. House Committee on Interior and Insular Affairs; the Honorable Daniel K. Inouye, U. S. Senator; the Honorable Spark M. Matsunaga, U. S. Senator; the Honorable Daniel K. Akaka, U. S. Representative; the Honorable Cec Heftel, U. S. Representative; the Honorable George R. Ariyoshi, Governor of the State of Hawaii; the Honorable Richard S. H. Wong, President of Hawaii's State Senate; the Honorable Henry H. Peters, Speaker of Hawaii's House of Representatives; the Honorable Joseph Kealoha, Chairman, Office of Hawaiian Affairs; Kina'u Boyd Kamali'i, Chairperson, Kaulana Na Pua Institute, Inc.; the Honorable Sandra Smoley, President of the National Association of Counties; the Honorable John Nesbo, President of the Western Interstate Region; the Honorable Jesse Fukushima, President of the Hawaii State Association of Counties; the Honorable Hannibal Tavares, Mayor of the County of Maui; the Honorable Stephen Yamashiro, Council Chairman, County of Hawaii; the Honorable Patsy Mink, Council Chairman, City and County of Honolulu; and the Honorable Raymond Duvauchelle, Council Chairman, County of Kauai.

COUNCIL OF THE COUNTY OF MAUI
WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is **HEREBY CERTIFIED** that the foregoing resolution was adopted by the Council of the County of Maui State of Hawaii, on the ____________ day of ____________________, 19____ by the following vote:

MEMBERS	Abraham AIONA	Howard S. KIHUNE Vice-Chairman	Linda LINGLE	E. Lee LIU	Ricardo MEDINA	Wayne K. NISHIKI	Charles S. OTA	Velma M. SANTOS	Goro HOKAMA Chairman
ROLL CALL									

Senator MATSUNAGA. Thank you very much.

It's most encouraging to know that the leaders of the county, consisting of the council, went into such detail in the study of the two volumes. And I might point out to those of you who have not seen volume I, this is what volume I is. Almost as thick as your telephone directory in Honolulu, any major city; and volume II is this—and reviews all that we have heard in Hawaii. Small as it is, this volume II carriers much, much more weight than this volume I. And this is what we will be trying to prove to the Congress of the United States after these hearings.

And what we are trying to do now is to gather ammunition for our fight in Congress—ammunition such as that which we'll be hearing today. Any questions?

Our next witness is a member of the Commission who submitted for the minority volume II, along with Kina'u Kamali'i and Winona Beamer. I think the one to whom the people of Hawaii, especially of native Hawaiian ancestry, can be truly grateful—along with Kina'u Kamali'i and Winona Beamer. So I am proud and happy to present to you at this time as our next witness, Mr. Rodger Betts, member of the Native Hawaiian Study Commission.

STATEMENT OF H. RODGER BETTS

Mr. BETTS. Senator Matsunaga, Senator Inouye, Congressman Akaka—this seems like old home week for me, gentlemen. It seems like we began this over 10 years ago, and have been working at it steadily all these years.

The Native Hawaiians Study Commission has presented to this committee its report on the culture, needs and concerns of the native Hawaiians.

The report, as you know, is in two parts. Volume I and volume II. Volume I is the majority report, six commissioners; and volume II is the dissenting and minority report, three commissioners.

I am one of the three minority and dissenting commissioners. All three of us are from Hawaii and are all native Hawaiians, as defined under the act that created the Commission. The majority members of the Commission were upon appointment, officials in the executive branch of the U.S. Government whose knowledge and understanding of Hawaii, its people and history began with their appointment and ended with the submission of their majority report. At best, it can be said that their experience in the area of the culture, needs and concerns of native Hawaiians was indeed fleeting.

As a signatory of volume II entitled "Claims of Conscience," I submit that volume II contains my full statement concerning the study required of the Native Hawaiians Study Commission.

Mr. Chairman, by your letter of April 6 inviting me to testify before this committee you indicated that specifically the committee will examine the overthrow of the Hawaiian monarchy in 1893, to determine whether or not the U.S. Government was involved, and what the consequences of such involvement, if any, flowed to affect native Hawaiian land control and other aspects of the life of the native Hawaiian.

My response will not be lengthy, for I believe that volume II covers the question fully and in great detail. I do not wish to restate or otherwise repeat what is contained in volume II. What I will say will be more direct and more simply said.

First, was the United States involved in the overthrow of the Hawaiian monarchy in 1893?

My answer is that without the involvement of the United States the overthrow could not have happened. To put it more plainly, the United States was responsible for the overthrow of the lawful government of the Hawaiian nation.

Volumes I and II deal at considerable length with the Blount and Morgan reports. Volume II covers it very well. Both reports deal with the involvement of the United States in the 1893 overthrow. The world will little note nor long remember Blount and Morgan, but the world cannot escape nor forget the special message of President Grover Cleveland to the Senate and House of Representatives, dated December 18, 1893. President Cleveland, as the Chief Executive Officer of the United States of America, eloquently and with great conviction stated in that message the following:

I will not read that entirely, I will just read portions of it.

> As I apprehend the situation we are brought face to face with the following conditions:
>
> The lawful government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.
>
> But for the notorious predilections of the United States minister for annexation, the committee of safety, which should be called the committee of annexation, would never have existed.
>
> But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.
>
> And finally, but for the lawless occupation of Honolulu under false pretext by the United States forces, and but for Minister Steven's recognition of the provisional government when the United States forces its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the sole purpose of submitting her case to the enlightened Justice of the U.S.

The message of the President—President Cleveland—to the Congress is the President's message. He may have Blount's findings, but the statements contained therein express the conviction of the President. It can readily assumed that the President as Commander in Chief and Chief of the executive branch of Government, had access to information from the Navy and Department of State not available to either Blount or Morgan.

I submit that the excerpts from the President's message, set forth above, explicitly describes the involvement of the United States in the overthrow and concludes that without such involvement, the overthrow could not have occurred.

I also submit that the best evidence of the degree of the involvement of the United States is the message delivered to the Congress approximately 11 months after the overthrow. Any attempt to diminish or denigrate the impact of the President's message after 91 years is, in my opinion, an irresponsible audacity of the highest order.

Senator Matsunaga, what does that peep mean? Do I have to summarize?

Senator MATSUNAGA. Yes, you may—however, in as much as you were a member of the Commission, you may——

Mr. BETTS. May I continue?

Senator MATSUNAGA. Yes; you may continue.

Mr. BETTS. The immediate consequence of the illegal and unlawful overthrow was to fulfill its original and only purpose; annexation of the Hawaiian Islands to the United States.

Volume II relates in detail the slowdown of the effort during the remaining years of President Cleveland's term and the rapid culmination of the attempt under President McKinley.

I will not go into what is clearly set forth in volume II as to the questionable legality of the method used to obtain the annexation of the Hawaiiian Islands; namely by joint resolution.

I wish to emphasize, however, that the Hawaiian Islands, a sovereign nation, was annexed by the United States without the consent of the native people of that nation—or anybody in that nation, for that matter. The majority report strains itself, indeed, when it leans on the weak reed of the consent of the Senate of the bogus Republic of Hawaii as the basis to fulfill the consent requirement of a nation, which can only be done through a plebiscite.

The majority report strains at gnats and swallows elephants to show that perhaps as many as six native Hawaiians were involved in the Senate vote of consent and, therefore, by some strange process, the six votes translated itself into consent by all the native Hawaiians.

The majority report uses as an example the annexation of the Republic of Texas to justify the use of a joint resolution for annexation purposes but fails to point out that the people of Texas voted for annexation in a plebiscite held to obtain that consent.

It is my opinion that the failure to obtain the consent of the native Hawaiian people by direct vote in a plebiscite for annexation violated every principal and precedent of the American concept of due process and justice. It is an incurable defect in the process and was deliberately done because it was known as a certainty that such consent, as it should properly have been sought, would not have been forthcoming from the people.

The U.S. Congress in adopting the process it used for the annexation of Hawaii did in effect countenance a wrong after its commission and took advantage of a situation that had originally been brought about by the abuse of power by officers clothed with the authority and wearing the uniform of the United States and thereby became as culapable in that wrongdoing by compounding the first wrongdoing with another.

The first act in the scenario was the overthrow. The second act was the annexation. The second feeding on the first. The second act delivered the final blow resulting in the loss of sovereignty and independence of the native Hawaiian.

The chief player in both acts was the United States acting through its agencies and officers and the Congress. Without the chief player the show would never have been staged.

Second, how did the consequences of the involvement of the United States affect the native Hawaiian?

As has been discussed above, the involvement of the United States directly caused the native Hawaiian to lose dominion and domain over his native land.

The government and crown lands in which the native Hawaian had a vested interest were ceded to the United States without compensation. Historical and traditional native rights in these lands were extinguished.

The native Hawaiian became a stranger in his own land. The full effect on the native Hawaiian caused by the loss of his country is fully dealt with in both volumes I and II and will be presented to you in more detail by those more learned in this area than I.

The American Indian, the Alaskan Native, and the Hawaiian native are the only native or aboriginal inhabitants of what now constitutes the 50 States of the United States of America. They comprise a distinct and easily identifiable class of people who are all now citizens of the United States. There are ample historic policies and precedents established by the United States in its dealings with its native or aboriginal people. These are well documented in volume II. We have seen how the legal precedents and policies first developed with the American Indian were made applicable to the Alaskan Native. The time has come for these historic policies and precedents to be made applicable to the claims of the native Hawaiian. To do anything less would a be a travesty of justice.

The Hawaiians claim for a remedy for the wrongdoings of the United States against them stands as strong, if not stronger, than the claims of their American Indian and Alaskan Native brothers.

Queen Liliukalani placed her case before the benign justice of the United States 91 years ago.

The claim is not just a Hawaiian claim. It is also an American claim. The United States must vindicate its honor and its sense of justice by an earnest and speedy effort to remedy the great wrong inflicted by it on the Hawaiian nation and its people.

And one more thing, Senator Matsunaga—volume II should replace volume I.

Thank you.

Senator MATSUNAGA. Thank you; thank you very much.

Senator INOUYE. May I suggest that we ask Mr. Betts to submit for the record something about himself. As you know, we know you as a brilliant member of the Bar of Hawaii, but Members of Congress may not be aware of your legal background. And I think it would be very helpful for those who are reading your testimony to know that it was provided by a distinguished member of the bar who is now the county attorney and who has had a vast background and experience in the land laws of Hawaii.

Mr. BETTS. I'll do that, Senator.

Senator INOUYE. That would be very helpful.

Senator MATSUNAGA. And I might remind all witnesses that the hearing record will remain open for a period of 2 weeks, so that if any of you who have testified, wish to modify your statement in any way, or add to that statement which you will deliver here today, you may do so within a 2-week period. And those of you who prefer not to speak, but merely to submit a written statement may also do that within the next 2 weeks. And that statement will appear in the record as though presented in person. So I invite those of you who are bashful to take the mike. I recall when the first mike was put in front of my face, I couldn't talk. If there are those among you who get that feeling, you may submit your statement in writing.

Our next witness is Mr. Charles Maxwell. He's the chairman of the Hawaii Advisory Committee of the U.S. Commission on Civil Rights, and is one of the first members who came to Washington as a member of the Aloha group, as I recall.

Charlie, we'd be happy to hear from you.

STATEMENT OF CHARLES KAULUWEHI MAXWELL

Mr. MAXWELL. Mr. Chairman, Dan, Danny, welcome to Maui.

Before I begin my testimony, I would like to take this means in thanking the mayor of Maui for his eloquent testimony which shows where his heart is. I know the mayor has helped us with Hawaiian issues, and I think the Hawaiian people are very appreciative of this fact.

Instead of reading my testimony from the civil rights commission—and there's a correction: I'm the vice chairman of the State civil rights commission. Our office will submit within 2 weeks the testimony. I would like to read my personal testimony as a concerned native Hawaiian.

Dan and Sparky, it's been a little over 12 years since we walked into your offices in Washington, DC, exclaiming that we were seeking reparations from the U.S. Government for overthrowing our monarchy in 1893. Senator Inouye, I remember that you told us to go back to Hawaii and unite our people. Sparky, you told us to spread the word of our cause and you even paid for a movie that we made called Kaulana Na Pua, which told of the Queen's overthrow. I am now informing you gentlemen, that we have spread the word and have united our people, and our children are aware of what happened to their ancestors.

I believe that each person that sits on this committee is honorable and fair. It is time that you realize the fact that the plight of the native Hawaiian is real and should not be used by the Democrats and Republicans as a political football. The idea of the Study Commission was wrong to begin with, and we of the ALOHA Association had protested its concept. Again, as I have said over the past 12 years, the facts are in black and white and did not have to be researched.

I would like to support the minority report, and recommend further that this committee look at introducing a bill which would do the following:

Apologize to Queen Liliuokalani.

Restore rights to native Hawaiians to include: beach access, rights to fishing and to the mountains, et cetera.

Restrict selling of Hawaii's natural resources—coral, fishing, geothermal, et cetera. Whatever resources are sold, a percentage to educate the native Hawaiian children.

Return any Federal surplus land unencumbered to either the Hawaiian Homes, OHA, or an agency to distribute the land to the native Hawaiian people.

Make a monetary settlement that could be used for a variety of native Hawaiian needs—health, education, culture, et cetera.

When you consider what the native Hawaiians lost—dominion and domain, culture and identity—you will have to agree that the above suggestions are not excessive.

I would like to conclude by saying that the so-called Reaganites that drafted the majority report did so with painted eyes and mind. There is no doubt that the United States of America, through its Minister Stevens with the troops of the U.S.S. *Boston,* illegally and without cause took over the government of Queen Liliuokalani, who had a protectorate treaty with this same U.S. Government.

Gentlemen, I hold in my hand a book that was written by Prof. W.D. Alexander in 1896. It is called, "Later Years of the Hawaiian Monarchy and Revolution of 1893." It contains numerous communications between all parties involved. I offered it to the Study Commission, but no one approached me. I now offer it to you, Sparky. It is very old, but it might help this committee. Just return it when you are pau.

Mahalo Nui Loa.

Senator **Matsunaga**. Thank you very much, Charlie. And rather than take your copy, I believe we can obtain a copy from the Library of Congress, which I am told does have a copy. This is a precious document which I don't want to take off your hands. And sometimes an old document such as this one can say so much more than we of this generation can say. And I appreciate your generosity in offering it to us. Thank you very much, Charles.

Our next witness is Mr. Jeff Wallace, who is the field representative of the U.S. Civil Rights Commission from Los Angeles——

Mr. **Wallace**. I won't be testifying.

Senator **Matsunaga**. Oh, you will not.

Mr. **Wallace**. No.

Senator **Matsunaga**. And our next witness, then, is Alma Cooper, the provost of the Maui Community College.

Alma, I thought I didn't see you in the audience. She visited Washington just a week ago.

Mr. **Betts**. I think she's going to be late coming.

Senator **Matsunaga**. Oh, fine.

Mr. **Betts**. She didn't know where she was. She called me earlier this morning, wanted to know when she was on the——

Senator **Matsunaga**. Oh, I see.

Mr. **Betts** [continuing]. Agenda, and I did not know.

Senator **Matsunaga**. All right.

And then we'll go next to Mr. Joyce Kainoa of Kaunakakai. Joyce, are you here? I guess not. Everybody's had the plane delayed, I suppose, or something.

Then we'll go to Dr. Emmett Aluli, also of Kaunakakai.

Emmett, are you here?

I guess next, then, we'll go to Miss Peggy Ha'o of Ohano 'O Hawaii. Peggy? Oh yes, she is here. We'd be happy to hear from you, Ms. Ha'o.

Ms. Ha'o. We're definitely happy to see you again, today, and recovered from your recent illness, and well enough to get back to work. We do need you.

Mahalo.

STATEMENT OF KAUINUI'O HA'O

Ms. HA'O. We pray for your continuous health and peace.

We particularly welcome the rest of the panel to Hawaii and hope that they will visit the Mauna Loa Volcano and see our Goddess Pele in her fiery beauty. We pray for your health and your peace.

Of course, I am referring to those who are sitting with you.

We are grateful to be given the privilege and the opportunity to appear and present our statements.

It is very difficult for me to give my testimony. It's all written in here and I have references to go with it. And it shows exhibits from 1—correction, 1 to 15 rather than from 1 to 23. On the second page, I have exhibits 1 and 2 showing the political question and the authority that the President of the United States had at the time of the overthrow. I felt that I didn't need to do any further than what Mr. Betts has given before me, and I'm sure many others have given detailed information regarding the overthrow, and those questions that were asked of us.

But after the reparations, the Aloha Association pursuit to the United States, the Ohano 'O Hawaii have been founded here on Maui, and it only seems proper that I come back here to Maui to address my final 12 years of research work that have been done on the Hawaiian people. A compiled proof of documents, compiled testimonies of my people on tape as well as on paper, has been put together by the community of 28,000 of us. Actually, there are 51,000 of us, but we can't count the little children because they can't speak for themselves.

Our whole purpose of the Ohano 'O Hawaii was to find our people and bring them all together. And you perhaps recently heard that the Ohano 'O Hawaii has pursued this matter to the International Court, to the United Nations, and have recently just come back—I just got back from the Geneva Convention—seeking access to bring the question, which this hearing is for, about the 1893. Beyond any reasonable doubt, the search that we have made during this recent 12 years, the United States is in the wrong. The Hawaiian people still maintain their sovereignty and independence. We have never lost it. Now, that's very ironic, that the research that we have made in the humanoid center archives, we find no record, none whatsoever, about Hawaii. It's hard to believe that here we are, at one time a sovereign and independent government, and we should have had some recognition considering the fact that Kalakaua had treaties with all these countries around the world. And as we stood before the council of diplomats of all countries of the world, the only countries that didn't want to recognize Hawaii were the United States, Great Britain, France, Canada, and two others who abstained. Otherwise, all the rest of them were in support of the Hawaiian sovereignty and independence. This is the reason I moved in the direction I did, because we seem to be having a hard time struggling here within the system of the United States—we seem to be dragging along, all the time. Every time we seekers get there, something happens that prevents us from getting it. We seem to never be able to become successful in whatever we're trying to achieve.

And what are we trying to achieve? We're trying to achieve to get back on our land, and our aina. Maybe because we feel a lot of it's going away so fast, even those that we already hold possession of, considering the Bishop Estate, Hawaiian Homes, and some private property. We see even those are being taken away very quickly. So it was necessary during these recent years for us to follow that question: whether the United States was involved. That conspiracy—and I have provided some papers. This is very limited. We have submitted over 80,000 documents that are by the U.S. Government and State government. And everything that has been going on has been submitted, to supplement our cause—the question: are we still sovereign and independent? Do we have the right to give this away? Do we have a right to demand of the United States, to say, "Hey, you're, you know, you're sorry, the United States; hey, you're sorry? You should be sorry for what you've done." For what? For our honor? For their honor? No.

You know, you go to a traffic court, and if you break that law and you come up before the judge and say, I'm sorry for what I've done, you're most certainly not going to walk out of that court without a fine. So then the United States should pay. They should compensate. And the only way it can be done, as I saw it, was the Hawaiian people to become sovereign and independent again. To assume that would mean that we need the United Nations to be overseers of Hawaii, maintain the United States here as a defense fund for them, as well as for ourselves. And became an international state. If need, necesarily to have to eventually secede from the United States, to assume entire power over these islands, then that's the direction that we should take. We have that right today. We have the choice to make. If we continue being citizens of the United States, which we have right to have dual citizenship, with the United States as well as our own. And this is not an issue just for the Hawaiians. It has to do with everybody in Hawaii. They have to be aware and protective of these islands. We just can't let it go on and on and on inevitably. It'll destroy everything we have. And I have just come from Hana. And the highway was just filled with cars, going in. I never saw the likes of it. Hundreds and hundreds of cars this morning. And I was coming in from Hana, and I seen all that traffic going in. Do you think it'll end? No, it won't.

So I felt that we had found the answers. I felt that it was necessary that we do. And that when the United States continues to do what they're doing, we have a place to go to bring this issue to the United States. We can't handle it here. We can't stop the President of the United States. Then we'll do it with another means. If we have to bring pressure upon the United States through the United Nations; and I believe that we then will be equal to the rest of the countries of the world. We'll be treated as an equal. Not just the Hawaiian people, but peoples of Hawaii. It's important that we are in control of our destiny.

I thank you, gentlemen. Is there any questions? I'm sure there must be many questions, but they're very detailed.

[Due to the voluminous nature of the material submitted by Ms. Ha'o it has been retained in committee files.]

Senator Matsunaga. Thank you very much——

Ms. Hao. Thank you.

Senator MATSUNAGA. Peggy; thank you for your most enlightening remarks.

Our next witness is Jalna Keala. Jalna.

Jalna is representing the Hawaiian Civic Clubs, as I understand.

STATEMENT OF JALNA KEALA, SECOND VICE PRESIDENT, ASSOCIATION OF HAWAIIAN CIVIC CLUBS

Ms. KEALA. Good morning, Senator. How are you this morning?

Senator MATSUNAGA. Fine.

Ms. KEALA. I, at the end of my testimony I would also like to read the letter of transmittal that I sent to you, because I would like it to be entered into the record.

Senator MATSUNAGA. Fine. Without objection, it will be made a part of the record.

Ms. KEALA. Thank you.

Aloka Kakou, Senator Matsunaga and members of the U.S. Senate Committee on Energy and Natural Resources. My name is Jalna Keala, and I am testifying as a vice president of the Association of Hawaiian Civic Clubs, on behalf of President Benson Lee who is unable to be here today.

By way of introduction into our organization, the Association of Hawaiian Civic Clubs consists of 43 chapters and approximately 4,000 members in the States of Hawaii and California.

We provide between 75,000 and 125,000 dollars' worth of scholarship assistance to Hawaiian students every year, and obviously we believe very strongly in education and it is one of our primary focuses.

We trace our history back to 1918, when the original Hawaiian Civic Club was founded by prominent and influential members of the Hawaiian community as one of several groups organized to better the conditions of a decimated Hawaiian race. Prince Kuhio himself was a charter member while serving as delegate to Congress, and always urged club members to get involved and participate in Government. He saw this as a means of starting to correct some of the past wrongs that created the miserable present, meaning 1918, and hopefully to prevent future hurt.

The original civic club was basically designed to, No. 1, perpetuate Hawaiian culture, and No. 2, provide an open forum for discussion of issues impacting on Hawaiian people. We have continued to do that for these 66 years in unbroken succession, providing a fertile and prolific training ground for Hawaiian leaders in many fields. Meantime, we have maintained a firm and constant extended network on all the islands and now on the mainland. I make no apology to those who have considered us snail like, and becoming impatient, join or form new single issue groups which allow greater individual expression and style.

When short term groups fade into memory or disintegrate from lack of interest, past experience has proven that the first organization that comes into the minds of people who need a large cohesive group of Hawaiians is the civic club. We are constantly besieged by requests to assist people. We are established, we successfully strive to educate Hawaiian youth, we communicate and we are very visible. Other than things Hawaiian, we are not a single issue organization, but try to represent many views, and often find ourselves in open and sometimes heated debate, just as our founders envisioned it. You need to know the animal you're dealing with, and therefore I present you with this information, gentleman, and to impress you with the fact that the Association of Hawaiian Civic Clubs is an organization that has been around for a while, and expects to be around a while longer.

The association has an annual convention, rotated geographically, which is a happy blend of socially perpetuating our culture while carrying on confrontive business meetings and hammering out decisions and resolutions. We work hard and play hard at our conventions, and come away knowing that we provide a catalyst for Hawaiians that extends far beyond our membership.

The 1983 Civic Club Convention was held in Kona last November, when approximately a thousand people registered to participate and two new clubs, one in California and one in Kona, received their charters.

Through committee sessions and in floor debate, the numbered resolutions submitted to you today were discussed, argued, amended and adopted. You subsequently have before you the expressed opinion of a large body of Hawaiians who have thoroughly aired the issues and now present them to you for further action.

The Association of Hawaiian Civic Clubs, in testimony before this committee, submits the following resolutions—and I won't bother to read the titles, Senator, because you know what they are.

Senator MATSUNAGA. They will appear in the record.

Ms. KEALA. Thank you.

However, I would like to elucidate a little bit on 83-16,

> Urging the Congress of the United States to establish a single definition of "Native Hawaiian" without reference to a blood quantum, and to provide approporiate protections to guarantee the rights and privileges of current Hawaiian Homes beneficiaries.

It is necessary to tell you that this particular resolution was a very sensitive one, and generated emotional and fiery exchange among members in committee as well as on the convention floor. A small, vocal minority contested this resolution, while the overwhelming majority of the House, many of them 50 percent or more Hawaiian blood—may I continue, sir?

Senator MATSUNAGA. Yes, please.

Ms. KEALA. Supported it. In the final analysis, it was carried unanimously. However, further discussion seems to be warranted since this is the first time such a position has been taken by the membership of a Hawaiian constituency.

This association well recognizes the wounds created by an act of the U.S. Congress that divides our people by measuring their blood quantum. We compare it to estates and trusts created by Hawaiians—Bishop Estate, the Liliuokalani Trust, the Lunalilo Trust—that make no such blood distinction. Our own Hawaiian Civic Club founders orginally worked for the establishment of the Hawaiian Homes program and advocated no blood quantum qualification. However, faced with the possible loss of the homestead legislation, a compromise was struck, and the 50 percent blood quantum imposed.

This association finds the 50-percent blood quantum restriction divisive and foreign to Hawaiian concepts. This is particularly onerous at a time when we Hawaiians are trying to reassert our culture and regain our identity. The clear direction from our membership is to establish a single definition while protecting the rights of current beneficiaries and those presently waiting on the Hawaiians Homes applicant list.

The final resolution did not come to our convention, however, the officers of the board of directors have supported it and have signed a petition which will be submitted to you via Kaulana Na Pua Institute.

I'd like to skip to the conclusion.

The Association of Hawaiian Civic Clubs extends our appreciation for the willingness of this committee to hold a hearing in Hawaii. We urge your support of the resolutions submitted here, and welcome your assurances of continued action on the Native Hawaiians Study Commission Report. We recognize the historic significance of these hearings, and note how Hawaiians as a group are today displaying a desire and ability for self-determination unseen for the past 200 years.

We are assimilated enough to distinguish the vast differences between justice and injustice. We are educated enough to be able to challenge those issues through the system that governs us. We are Hawaiian enough to know that the maintenance of our identity as an aboriginal people of these islands will ultimately benefit all of the present inhabitants.

And this association has reorganized—you will hear from us again on Friday—a political action arm from which you will be hearing on another day, but whatever the concern, if it is Hawaiian, the Civic Clubs will undoubtedly be involved.

May I also read the letter of transmittal to you, please?

Senator MATSUNAGA. Please.

Ms. KEALA. On behalf of President Benson Lee and the Association of Hawaiian Civic Clubs, I wish to submit these 15 copies of testimony and documentation confirming the association's support of volume II of the Native Hawaiians Study Commission Report and the rejection of selective sections of volume I as itemized in one of the attached resolutions.

We urge the members of the U.S. Committee on Energy and Natural Resources to give full and serious consideration to refuting those offensive inaccuracies that insult the Hawaiian culture and demean American principles of justice.

Mahalo for your continuous work on behalf of the Hawaiian people, and we sincerely wish you extended good health.

[The resolutions follow:]

ASSOCIATION OF HAWAIIAN CIVIC CLUBS
12 November 1983

RESOLUTION NO. 83-07

URGING THE CONGRESS OF THE UNITED STATES TO ACKNOWLEDGE THE ILLEGAL AND IMMORAL ACTIONS OF THE UNITED STATES IN THE OVERTHROW OF THE KINGDOM OF HAWAI'I IN 1893, AND TO INDICATE ITS COMMITMENT TO GRANT RESTITUTION FOR THE LOSSES AND DAMAGES SUFFERED BY NATIVE HAWAIIANS AS A RESULT OF THOSE WRONGFUL ACTIONS

WHEREAS, the State of Hawaii and all of her people proudly share, endorse, and encourage American ideals and principles of justice through law, and profoundly believe that an unresolved injustice to one is a harm endured by all; and

WHEREAS, such a harm to native Hawaiians has occurred without redress or remedy; and

WHEREAS, native Hawaiians have been included and identified as native Americans in recognition of their unique and special relationship with the United States as an indigenous people; and

WHEREAS, as a result of the good conscience of the American people, speaking through the Congress, redress and remedy have been granted to other native Americans for injustices and harm done them; and

WHEREAS, the Congress of the United States has indicated its interest in the pursuit of seeking resolution to possible claims by native Hawaiians for the losses and damages which resulted from the overthrow of the legal government of the Kingdom of Hawai'i in 1893; and

WHEREAS, the Congress enacted Public Law 96-565, Title III, and thereby established a Native Hawaiians Study Commission to advise the U.S. Senate Committee on Energy and Natural Resources and the U.S. House Committee on Interior and Insular Affairs on issues of concern to native Hawaiians; and

WHEREAS, the Association of Hawaiian Civic Clubs of the State of Hawai'i also has an abiding and deep commitment to the fulfillment of the national purposes relating to native Hawaiians and truly affecting all of the citizens of Hawai'i; and

WHEREAS, it is, therefore, appropriate for this Association of Hawaiian Civic Clubs to express its formal beliefs in the matter of native Hawaiian claims against the United States for actions which occurred in 1893, and subsequently with United States of America annexation of the Islands of Hawai'i in 1898; and

WHEREAS, based upon a careful examination of historical records and accounts the Legislature of the State of Hawai'i has determined there is sufficient reason to believe that:

1) The United States, through its representatives in the State and Navy Departments, did encourage and actively support rebellion against the legitimate government of the Kingdom of Hawai'i;

2) The involvement of U.S. Minister John L. Stevens was crucial to the success of the rebellion, and that his refusal to remain neutral in the domestic affairs of the Kingdom and, instead, to become an active agent in the planning and military force supporting the insurrection by ordering the landing and placement of American marines in a manner and position unmistakably intended to intimidate the Queen of Hawai'i and her government;

3) Without such armed American support, the insurgence would have failed for a lack of popular support and insufficient arms; and

4) Such actions by the American minister and forces was a breach of international law, of treaties with the Kingdom of Hawai'i, and was characterized by President Grover Cleveland in his "Executive Message to Congress" (December 1893) as an illegal and immoral act of war against a feeble and trusting nation; and

WHEREAS, because of these American actions the Queen yielded her authority and that of her government to the United States through Minister Stevens, who did not forward her plea for review by the United States but acted to recognize a provisional government composed of leaders of the insurrection and to declare an American protectorate over the Islands; and

WHEREAS, these actions were augmented two weeks later by the occupation of American troops in all government buildings of the Hawaiian Islands at the request of the provisional government from a fear of being unable to maintain control; and

WHEREAS, these actions culminated in the assertion of control by the subsequent Republic of Hawai'i over the crown, government, and public lands of the Kingdom of Hawai'i; and

WHEREAS, such lands and sovereignty represented the traditional and ancestral land rights and titles of the native Hawaiian people; and

WHEREAS, these ancestral rights and lands were ultimately ceded to the United States by a government whose existence was dependent upon the actions and agents of the United States; and

WHEREAS, this transfer occurred without the consent of the native Hawaiian people, without compensation for their interests, and without any explicit protection of their interests; and

WHEREAS, through amendments to the State Constitution in 1978, the people of the State of Hawai'i ratified and formally acknowledged the rights of native Hawaiians to a legislatively determined pro rata share of the proceeds of such lands ceded to the United States and returned as a public trust to the State of Hawai'i in the Admission Act of 1959; and

WHEREAS, in the ratification of another constitutional amendment in 1978, the people of Hawai'i also established an Office of Hawaiian Affairs to administer the proceeds from this trust, and explicitly empowered the Office to be the receptacle for all moneys or lands granted to the native Hawaiians as restitution by the United States for damages incurred by the actions which resulted in the overthrow of the Kingdom of Hawai'i; and

WHEREAS, this State Constitutional provisions, and their codification in the Hawaii Revised Statutes as Chapter 10, do indeed endorse and encourage native Hawaiians rights and interests as a significant, proper, and public purpose; and

WHEREAS, this resolution is offered as part of a concerted and unified expression of the people of Hawai'i, and has been adopted in this form by the State House of Representatives, 12th Session; the County Councils of Maui and Hawai'i, and the 1983 State Convention of the Republican Party of Hawai'i.

NOW, THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs of the State of Hawai'i, 24th Annual Convention 1983, that the Congress of the United States is respectfully urged to acknowledge the illegal and immoral actions of the United States in the overthrow of the Kingdom of Hawai'i in 1893, and to indicate its commitment to grant restitution for the losses and damages suffered by native Hawaiians as a result of those wrongful actions; and

AHCC RESOLUTION NO. 83-07

BE IT FURTHER RESOLVED, that certified copies of this resolution be transmitted to the President pro tempore of the U.S. Senate; the Speaker of the U.S. House of Representatives; the Chair of the U.S. Senate Committee on Energy and Natural Resources; the Chair of the U.S. House Committee on Interior and Insular Affairs; the members of the Hawai'i Congressional delegation; the Chair of the Native Hawaiians Study Commission; and the Chair of the Board of Trustees of the Office of Hawaiian Affairs.

SUBMITTED BY:	Waialua Hawaiian Civic Club Association of Hawaiian Civic Clubs
REFERRED TO:	Presidents Committee
ACTION:	Adopted as amended

ASSOCIATION OF HAWAIIAN CIVIC CLUBS
12 November 1983

RESOLUTION NO. 83-13

URGING THE CONGRESS OF THE UNITED STATES TO ESTABLISH A JOINT FEDERAL-STATE CEDED LANDS COMMISSION TO REVIEW THE STATUS AND NEED FOR FEDERALLY-CONTROLLED LANDS IN THE STATE OF HAWAII

WHEREAS, the history and development of land tenure patterns and laws in Hawaii are truly unique and without parallel in the experience of the United States; and

WHEREAS, these historical and continuing differences are traceable, in part, to the polynesian tradition of the Islands, the manner and nature of American annexation of Hawaii and the reflection of these forces in the terms and conditions of the Admission Act of the State; and

WHEREAS, 1.7 million acres of crown, government and public lands were ceded to the United States by the terms of American annexation by the then Republic of Hawaii; and

WHEREAS, this cession was concluded between two nations -- allbeit without the consent of or compensation to the people of Hawaii -- with the mutual acknowledgment that such lands would be used for the "benefit of the inhabitants of the Hawaiian Islands;" and

WHEREAS, the manner and terms of the ceded lands transfer created a public trust which cannot be abrogated or unilaterally altered without violating international law structures or the terms of a bilateral international agreement; and

WHEREAS, these conditions were discussed and recognized in the 1947 Congressional hearings on the admission of the then Territory of Hawaii as a state, and resulted in the inclusion of Section 5 in the proposed Admission Act of that year and all subsequent bills; and

WHEREAS, the final form of the Admissions Act for the State of Hawaii -- as enacted by Congress, signed by the President of the United States and ratified by the citizens of Hawaii -- acknowledged a trust which was to be maintained and managed for the benefit of all the "inhabitants" of Hawaii; and

WHEREAS, the bulk of these lands were returned in fee to the State of Hawaii in the Admission Act, with explicit trust impositions and the naming of two possible beneficiary classes: Native Hawaiians, as defined in the Hawaiian Homes Act, and the general public; and

WHEREAS, the broad public purposes enunciated as consistent with the trust could be fulfilled at the discretion of the State; however, any purpose outside those named would result in a breach of trust; and

WHEREAS, the State of Hawaii, in the State Constitution of 1973, acknowledged the beneficiary interest of native Hawaiians and provided a pro rata share of the ceded lands revenues be set aside for the "betterment of native Hawaiians." These funds are administered and managed by the Office of Hawaiian Affairs whose Board of Trustees are elected by all Hawaiians; and

WHEREAS, this trust as a federal responsibility was not extinguished by the Admission Act or its terms. All ceded lands set aside for national park purposes were declared fee and the property of the Department of the Interior. However, it was the intent of Congress that all other lands controlled by the federal government were subject to return and incorporation into the trust of the State of Hawaii; and

AHCC RESOLUTION NO. 83-13

WHEREAS, this reversionary interest of the State in all non-park federal lands is now also of explicit trust interest to native Hawaiians by the establishment of the Office of Hawaiian Affairs; and

WHEREAS, in the 24 years since statehood, less than 600 acres of federally controlled ceded lands have been returned from a total of nearly 404,000 acres.

NOW, THEREFORE, BE IT RESOLVED, the Association of Hawaiian Civic Clubs at its 24th Annual Convention in Keauhou, Kona, Hawaii, 11-12 November 1983, urges the Congress to establish a Joint Federal-State Ceded Lands Commission for the State of Hawaii, to review the present use and possible release of federally controlled ceded lands in Hawaii; and

BE IT FURTHER RESOLVED, that this Commission advise the Congress on the status of these lands, and have the authority to declare such lands surplus and available for return to the State of Hawaii, and that native Hawaiians be included and consulted in the course of the Commission's review; and

BE IT FURTHER RESOLVED, that this Commission include native Hawaiians in the Commission; and

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the President pro tempore of the U.S. Senate; the Speaker of the U.S. House of Representatives; the Chair of the U.S. Senate Committee on Energy and Natural Resources; the Chair of the U.S. House Committee on Interior and Insular Affairs; the members of the Hawaii Congressional delegation; the Governor of the State of Hawaii; the President of Hawaii's State Senate; the Speaker of Hawaii's House of Representatives; the Chair of the Native Hawaiians Study Commission; the Office of Hawaiian Affairs; and all Hawaiian organizations.

SUBMITTED BY: Prince Kuhio Hawaiian Civic Club
Association of Hawaiian Civic Clubs

REFERRED TO: Presidents Committee

ACTION: Adopted as amended

ASSOCIATION OF HAWAIIAN CIVIC CLUBS
12 November 1933

RESOLUTION NO. 83-14

URGING THE CONGRESS OF THE UNITED STATES TO MAINTAIN NATIVE HAWAIIANS IN THE DEFINITION OF NATIVE AMERICAN AND EXTEND TO NATIVE HAWAIIANS ELIGIBILITY IN ALL PROGRAMS AFFECTED BY SUCH DEFINITION WITHOUT PREJUDICE

WHEREAS, the Congress of the United States has recognized the unique attributes of indigenous American people as constitutionally and morally deserving of national attention and legislation; and

WHEREAS, the Congressional willingness to extend this recognition to native Hawaiians is now imperfectly and unfairly extended; and

WHEREAS, the Hawaiian people are the indigenous inhabitants of the Hawaiian Islands; and

WHEREAS, at the time the Kingdom of Hawaii and its government was illegally overthrown in 1893, it was fully recognized as a member of the international community of nations; and

WHEREAS, native Hawaiians were citizens of an organized self-governing nation whose status as an independent sovereign was formally recognized by other nations; and

WHEREAS, as early as 1826, a treaty was negotiated, although never ratified, between the United States and the Hawaiian Kingdom; and

WHEREAS, in 1842 American President John Tyler officially recognized Hawaii as a sovereign nation and declared a policy of respecting Hawaiian independence; and

WHEREAS, in recognition of this independence, Congress appropriated monies for the appointment of a minister from the United States to Hawaii; and

WHEREAS, the federal government has long recognized native Hawaiians as a distinct indigenous group and has dealt with them in a manner similar to other native American groups; and

WHEREAS, native Hawaiians meet many of the criteria which entitle an indigenous group of federal protection and services; and

WHEREAS, the Congress of the United States explicitly acknowledged its responsibility and ability to enact legislation to benefit native Hawaiians with the enactment of the Hawaiian Homes Commission Act of 1920, which placed over 200,000 acres of land in trust to rehabilitate native Hawaiians; and

WHEREAS, in the 1959 Admission Act, the Congress of the United States extended the scope of the federal government's recognition of native Hawaiians by requiring the State of Hawaii - by compact - to adopt the Hawaiian Homes Commission Act as part of the State Constitution; and

WHEREAS, the State Admission Act further recognized native Hawaiians in Section 5(f) by designating "the betterment of conditions of native Hawaiians" as one of the five trust purposes for which proceeds and income from the ceded lands trust could be expended; and

WHEREAS, the State Admission Act singles out native Hawaiians from the general public as specific beneficiaries of the ceded land trust, in recognition of the federal government's recognition of the status of native Hawaiians; and

AHCC RESOLUTION NO. 83-14

WHEREAS, in 1974 the Congress enacted legislation making Hawaiians eligible for participation in the programs of the Administration for Native Americans; and

WHEREAS, in 1978 the Congress amended the Comprehensive Employment and Training Act to include Hawaiians in the Indian Manpower Program administered by the Director of Indian and Native American Programs of the U.S. Department of Labor; and

WHEREAS, in the same year the Congress adopted the American Indian Religious Freedom Act and included native Hawaiians in its guarantees of religious tolerance; and

WHEREAS, despite their inclusion in these above-mentioned programs, native Hawaiians are presently ineligible to participate in the large majority of federal programs established for the benefit of other native American peoples; and

WHEREAS, through amendments to the Hawaii State Constitution in 1978, ratified by the people of the State of Hawaii, an Office of Hawaiian Affairs was established to serve as the principal public agency in the State responsible for all Hawaiians, and to receive a pro rata share of the ceded lands and trust revenues; and

WHEREAS, the Office of Hawaiian Affairs is governed by a nine-member Board of Trustees who are elected by the Hawaiian people; and

WHEREAS, native Hawaiians share all of the attributes and needs common to other indigenous peoples and are entitled to any and all benefits extended to other native Americans.

NOW, THEREFORE, BE IT RESOLVED, that the Association of Hawaiian Civic Clubs at its 24th Annual Convention in Keauhou, Kona, Hawaii, 11-12 November 1983, urges the Congress of the United States to maintain native Hawaiians in the definition of Native American and extend to native Hawaiians eligibility in all programs affected by such definition without prejudice; and

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the President pro tempore of the U.S. Senate; the Speaker of the U.S. House of Representatives; the Chair of the U.S. Senate Committee on Energy and Natural Resources; the Chair of the U.S. House Committee on Interior and Insular Affairs; the members of the Hawaii Congressional delegation; the Governor of the State of Hawaii; the President of Hawaii's State Senate; the Speaker of Hawaii's House of Representatives; the Chair of the Native Hawaiians Study Commission; the Office of Hawaiian Affairs; and all Hawaiian organizations.

SUBMITTED BY:	Prince Kuhio Hawaiian Civic Club Association of Hawaiian Civic Clubs
REFERRED TO:	Presidents Committee
ACTION:	Adopted as amended

ASSOCIATION OF HAWAIIAN CIVIC CLUBS
12 November 1983

RESOLUTION NO. 83-15

URGING CONGRESS TO REVIEW THE IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE JOINT FEDERAL STATE TASK FORCE ON HAWAIIAN HOME LANDS IN 1983, AND TO INITIATE BREACH OF TRUST OR OTHER APPROPRIATE LEGAL ACTION FOR NON-COMPLIANCE BY THE STATE OF HAWAII OR THE U.S. DEPARTMENT OF INTERIOR

WHEREAS, the Hawaiian Homes Commission Act of 1920 (HHCA) was enacted by the United States Congress on 9 July 1921; and

WHEREAS, said Act set aside over 200,000 acres of land for the rehabilitation of native Hawaiians through a program of land awards for homesteading, ranching, and/or farming; and

WHEREAS, the Hawaiian Homes Commission Act of 1920 was implemented and administered by the Territorial government through the Hawaiian Homes Commission until the Hawaiian Islands became a State in 1959; and

WHEREAS, the Act provided that only Congress could alter or amend the beneficiary class or benefits of program, and that all non-beneficiary transfers of the lands were subject to approval by the Secretary of the United States Department of Interior provided that lands were exchanged and not lost by such transfers; and

WHEREAS, in 1959, the Admission Act of the State of Hawaii included provision for a compact between the United States and Hawaii that the Hawaiian Homes Commission Act shall be included in the State Constitution Act as a condition of admission; and

WHEREAS, in 1959, the Department of Hawaiian Home Lands was established and title to Hawaiian Home lands was transferred to the State of Hawaii; and

WHEREAS, the compact and transfer of title of the Admissions Act also explicitly retained the power of Congress to exercise its prerogatives and obligations as outlined in the HHCA; and

WHEREAS, provisions of the Act further vest control over the use of such lands in the Hawaiian Homes Commission and not in any other government agency; and

WHEREAS, since the passage of the HHCA, a series of 33 Executive Orders and Proclamations by Territorial and State Governors, have transferred over 30,000 acres of Hawaiian Home lands from the DHHL's jurisdiction to other agencies, departments and individuals, without fair compensation for use or a mandated exchange of lands; and

WHEREAS, in the 60 years of the Act, less than 3,500 awards and less than 15% (a total of less than 30,000 acres) of the lands have benefited native Hawaiians; and

WHEREAS, over 80% of the DHHL land inventory is currently leased to non-native Hawaiians as a means of generating income for the program; and

WHEREAS, a report by the U.S. Commission on Civil Rights in 1980 and a suit by the "Hou Hawaiians" indicated that a breach of trust was inherent in such actions and conditions; and

WHEREAS, the Federal-State Task Force on the Hawaiian Homes Commission Act was jointly established by the U.S. Secretary of Interior and the Governor of the State of Hawaii on 14 July 1982 in response to such charges, and as a means of redressing such violations; and

WHEREAS, the Federal-State Task Force was mandated to make recommendations to the Governor of the State of Hawaii and to the U.S. Secretary of the Interior on ways to better effectuate the purposes of the Hawaiian Homes Commission Act and to restore and accelerate the distribution of benefits of the Act to its beneficiaries; and

WHEREAS, on 15 August 1983, the Federal-State Task Force submitted its findings and 134 recommendations to the Secretary of the Interior and the Governor of the State of Hawaii; and

WHEREAS, the Task Force can only seek voluntary compliance with its recommendations; and

WHEREAS, the Governor has already publicly stated that he will not comply with those recommendations which request the State of Hawaii to rescind all set-asides of DHHL lands which are not utilized for native Hawaiians; and

WHEREAS, it is the power and fiduciary responsibility of Congress to enforce those Task Force recommendations which affect the integrity of the Hawaiian Home Lands trust; and

WHEREAS, the Association of Hawaiian Civic Clubs concur in the recommendations and suggested actions of the Joint Federal-State Task Force as critical to a full and legal restoration of native Hawaiian rights and benefits embodied in the language and spirit of the Hawaiian Homes Commission Act.

NOW, THEREFORE, BE IT RESOLVED, that the Association of Hawaiian Civic Clubs at its 24th Annual Convention in Keauhou, Kona, Hawaii, 11-12 November 1983 urges Congress to review the implementation of recommendations adopted by the Federal-State Task Force on Hawaiian Home Lands on 15 August 1983, and to initiate breach of trust or other appropriate legal action for non-compliance by the State of Hawaii or the U.S. Department of Interior; and

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the President pro tempore of the U.S. Senate; the Speaker of the U.S. House of Representatives; the Chair of the U.S. Senate Committee on Energy and Natural Resources; the Chair of the U.S. House Committee on Interior and Insular Affairs; the members of the Hawaii Congressional delegation; the Governor of the State of Hawaii; the President of Hawaii's State Senate; the Speaker of Hawaii's House of Representatives; the Chair of the Native Hawaiians Study Commission; the Office of Hawaiian Affairs; and all Hawaiian organizations.

SUBMITTED BY:	Prince Kuhio Hawaiian Civic Club Association of Hawaiian Civic Clubs
REFERRED TO:	Presidents Committee
ACTION:	Adopted as amended

ASSOCIATION OF HAWAIIAN CIVIC CLUBS
12 November 1983

RESOLUTION NO. 83-16

URGING CONGRESS TO ESTABLISH A SINGLE DEFINITION OF NATIVE HAWAIIAN WITHOUT REFERENCE TO A BLOOD QUANTUM, AND TO PROVIDE APPROPRIATE PROTECTIONS TO GUARANTEE THE RIGHTS AND PRIVILEGES OF CURRENT HAWAIIAN HOMES BENEFICIARIES

WHEREAS, the U.S. Congress has established two definitions of a native Hawaiian, one setting a blood quantum of 50% or more for purposes of the Hawaiian Homes Act of 1920, and the other only requiring an individual to be a descendant of those inhabiting the Hawaiian Islands prior to 1778; and

WHEREAS, it is a vital concern to the Native Hawaiian community that a single definition be adopted which encourages and enhances the dignity and values of a single, unified people; and

WHEREAS, the blood quantum definition (in the words of a 1980 State Legislative Report) has "proved to be a factor in dividing the Hawaiian community, mothers and fathers from their children, cousins from cousins, and friends from friends; and

WHEREAS, the United States Congress pursuant to the Hawaiian Homes Commission Act, defined a native Hawaiian to be any descendant of not less than one-half of the blood of the races inhabiting the Hawaiian Islands previous to 1778; and

WHEREAS, Congressional records reflect that in 1920 Hawaii's Delegate to Congress, Jonah Kuhio Kalanianaole, who is most notably characterized as the "Father of the Hawaiian Homes Commission Act," advocated that there be no blood quantum but that if one were required, that the definition of native Hawaiian should be based on one-thirty second blood quantum reflective of the wide-spread inter-marriage amont native Hawaiians and other peoples of the Hawaiian Islands; and

WHEREAS, this definition of native Hawaiian was incorporated by reference in the Admission Act of the State of Hawaii in 1959, as a qualification for benefits from Section 5(f) of the Admission Act, as provided by State law; and

WHEREAS, the Office of Hawaiian Affairs was created in 1978 as a trust for all Hawaiians and authorized, pursuant to the Constitution of the State of Hawaii Article XII Sections 5 and 6, to manage that pro rata share of income designated for native Hawaiians pursuant to Section 4 of said Article and Section 5(f) of the Admission Act; and

WHEREAS, the Office of Hawaiian Affairs has encountered major fiscal and administrative hardships in managing income for two classes of Hawaiian people based on native Hawaiian definitions enacted by Congress; and

WHEREAS, Congress in 1974 amended the Native American Program Act to include native Hawaiians as native Americans and in so doing enacted a second definition of native Hawaiian that does not require a specific blood quantum, but merely a showing of Hawaiian ancestry to those native people inhabiting the Hawaiian Islands prior to 1778; and

WHEREAS, the State Department of Health in 1981 estimated the native Hawaiian population to be 43,466 as compared to 129,322 for those Hawaiians who are less than one-half blood; and

WHEREAS, it is recognized that the blood quantum issue is a root concern that has had a devisive affect on Hawaiian families and Hawaiian communities; and

AHCC RESOLUTION NO. 83-16

WHEREAS, it is recognized that self-determination is a desirable goal of Hawaiians and would be substantially achieved if ratification by Hawaiians was incorporated into any Congressional action seeking to resolve the issue of the blood quantum; and

WHEREAS, Congress has reserved the power of consent to any amendments to the definition of native Hawaiian pursuant to Admission Act, Section 4.

NOW, THEREFORE, BE IT RESOLVED, that the Association of Hawaiian Civic Clubs at its 24th Annual Convention in Keauhou, Kona, Hawaii, 11-12 November 1983, urges Congress to give full consideration to the recommendation of the Native Hawaiians Study Commission Report Volume II, which recommends that Congress of the United States adopt a simple definition of native Hawaiian to mean any individual, without reference to any blood quantum, whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778. And that proper guarantees to protect the rights and privileges of those now holding or awaiting a Hawaiian Homes award accompany this change; and

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the President pro tempore of the U.S. Senate; the Speaker of the U.S. House of Representatives; the Chair of the U.S. Senate Committee on Energy and Natural Resources; the Chair of the U.S. House Committee on Interior and Insular Affairs; the members of the Hawaii Congressional delegation; the Governor of the State of Hawaii; the President of Hawaii's State Senate; the Speaker of Hawaii's House of Representatives; the Chair of the Native Hawaiians Study Commission; the Office of Hawaiian Affairs; and all Hawaiian organizations.

SUBMITTED BY:	Prince Kuhio Hawaiian Civic Club Association of Hawaiian Civic Clubs
REFERRED TO:	Presidents Committee
ACTION:	Adopted as amended

Senator **Matsunaga**. Thank you very much, Jalna Keala.

I think we have time for one more witness this morning. And our next witness is Yola Forbes.

We'll be happy to hear from you, Yola.

STATEMENT OF YOLA M. FORBES

Ms. **Forbes**. Senator Matsunaga, Senator Inouye, Congressman Akaka, staff, friends, and relatives—aloha.

Before I start, I'd like to thank Senator Inouye for the help his office gave me in locating some documents in the Library of Congress.

My name is Yola Forbes, I was raised and grew up—born and raised in the Hawaiian Homestead on Molokai, and I am now living on Molokai. And I'm a native Hawaiian attorney with a rural law practice.

Today I want to touch on only one point. And that is the conclusion in volume I of the Native Hawaiians Study Commission report that Minister John Stevens and the U.S. forces were not acting under the direction of the U.S. Government. I have evidence from my own research to refute this conclusion.

Attorney General Richard Olney was the head of the Justice Department under the administrations of President Harrison and President Cleveland. Because Attorney General Olney was a participant in the Cabinet meetings in the administration of Harrison, what he has to say is extremely important. And what Attorney General Olney had said is that the United States has done a great wrong. In fact, he wrote a letter to Secretary of State Walter Q. Gresham when he came into office under President Cleveland. And this is what the Attorney General Olney said:

> The provisional government is our government. It was set up by our minister with the aid of our military and naval forces, given the protection of our flag, and President Harrison's administration practically sanctioned everything Minister Stevens took upon himself to do.

I have submitted the letters that Attorney General Olney wrote, for your information.

Senator **Matsunaga**. They will appear in the record.

Ms. **Forbes**. Now I'd like to talk about another point, and that is about Lorrin Thurston, who was the leader of the revolution. Lorrin Thurston was in both direct contact and indirect contact with the State Department of the United States. He openly spoke with Secretary of State Blaine and with Foster, and he indirectly communicated with both Blaine and Foster through an intermediary—Archibald Hopkins, who was at that time the clerk of the U.S. Court of Claims in Washington, DC. And there are letters which went between Archibald Hopkins from the State Department to Lorrin Thurston. In fact, one of those communications was an offer by the U.S. Government to buy the sovereignty of Hawaii for a quarter of a million dollars.

Now, Lorrin Thurston—and I have the letters or excerpts from the letters in the report that I've submitted—Lorrin Thurston in his memoirs has said that he was shown letters, diplomatic letters, that Minister Stevens wrote to Secretary of State Foster, long detailed letters about the situation in Hawaii, letters that were marked, "confidential." Those were seen by—shown to Lorrin Thurston before they were sent on to Washington. And I think that this indicates the intensity of the collusion between the U.S. Minister and the leader of the annexationists' revolt.

Minister Stevens, 10 months before the actual revolution, wrote a letter to Secretary of State Blaine in which he put forth a situation remarkably similar to the revolution which did occur. And he asked for instructions at that time from Secretary of State Blaine as to what he should do if such an event would occur. That letter, the reply from Secretary of State Blaine, could not be found. That is to say, Congress asked for it when it was studying this matter. And the reply, the letter was never sent to Congress to become a party of the public record. From my research, I have found that that letter was dated between March 19—should have been dated between March 19 and April 12, 1892, and it should have had the Department of State series number between 42 and 45. And I would make the presumption that the letter—contained damaging contents, and that the State Department can refute or rebut this presumption by presenting that letter and making it a part of the public record.

May I have another minute?

Senator MATSUNAGA. Please.

Ms. FORBES. Now, I want to note that President Cleveland, Attorney General Olney, and Secretary of State Gresham all admit to the great wrong done by the United States against the Hawaiian people. At the time of annexation, 5 years after the revolution, President Cleveland wrote a letter to Attorney General Olney, and this is what he said:

> Hawaii is ours. As I look back upon the first steps in this miserable business, and as I contemplate the means used to complete the outrage, I am ashamed of the whole affair.

The United States should still be ashamed of the whole affair, and must take steps to repair the wrong. Lorrin Thurston, John L. Stevens, and the U.S. Department of State were working in concert to accomplish the annexation of Hawaii to the United States against the will of the Hawaiian people.

I would like to finish by saying that I support and recommend volume II of the Study Commission, and that I refute that one conclusion in volume I—that the U.S. Government was not involved in the overthrow of the Hawaiian Government.

Thank you.

[Material submitted by Ms. Forbes follows:]

LINES OF EVIDENCE TO SHOW UNITED STATES COMPLICITY IN THE ANNEXATIONISTS' REVOLT AGAINST THE HAWAIIAN GOVERNMENT IN 1893.

1. U. S. Minister to Hawaii John L. Stevens' letter of March 8, 1892 to Secretary of State James G. Blaine asking for instructions in the event of a revolutionary movement, and the failure of the Dept. of State to submit Secretary Blaine's reply to Congress, upon its request, or to make the letter part of the public record.

2. Direct communication of Secretary of State Blaine with Lorrin A. Thurston and indirect communication with Secretary of State John W. Foster through Archibald Hopkins, Clerk of the U. S. Court of Claims in Washington.

3. Acts of U. S. Minister Stevens in consulting with and aiding Lorrin A. Thurston in his preparation for the overthrow and eventual annexation to the United States.

4. Acts of the Secretary of State John W. Foster and President Benjamin Harrison in expeditiously drafting a treaty of annexation and rushing it to the Senate for ratification before President Harrison was to leave office, and before investigating the facts in Hawaii or honoring the request of Queen Liliuokalani to explain her side of the story.

5. The act of Secretary of State John W. Foster and President Benjamin Harrison in the Treaty of Annexation of 1893 of requiring that the Executive of the United States have veto power upon the acts of the Hawaiian Government until the time of annexation.

6. Letter of Attorney General Richard Olney dated October 9, 1893 to Secretary of State Walter Q. Gresham admitting "that a great wrong was done under the auspices of the United States Minister Stevens."

7. Attorney General Olney's letter to Secretary of State Walter Gresham on October 9, 1893, Secretary of State Gresham's letter to President Grover Cleveland on October 18, 1893, President Cleveland's Message to Congress on December 18, 1893, and House Resolution of February 7, 1894, all admit to the great wrong done by the United States against the Hawaiian People.

This paper is presented to refute the conclusion in the Report of the Native Hawaiians Study Commission, Volume I, that the United States Minister to Hawaii, John L. Stevens, and the U. S. forces were acting without authority from the United States Government in their support of the revolt of 1893. Several lines of evidence are presented to support this refutation.

1. U.S. Minister to Hawaii John L. Stevens' letter of March 8, 1892 to Secretary of State James G. Blaine asking for instructions in the event of a revolutionary movement, and the failure of the Dept. of State to submit Secretary Blaine's reply to Congress, upon its request, or to make the letter part of the public record.

On March 8, 1892, approximately 10 months before the overthrow of the Hawaiian Government, Minister Stevens wrote to Secretary of State James G. Blaine asking for instructions in the event of a revolutionary movement, citing a situation remarkably similar to that which occurred on January 17, 1893.

> Sir: In view of possible contingencies in these islands I ask for the instructions of the Department of State on the following, viz:
>
> If the Government here should be surprised and overturned by an orderly and peaceful revolutionary movement, largely of native Hawaiians, and a Provisional or Republican Government organized and proclaimed, would the United States minister and naval commander here be justified in responding affirmatively to the call of the members of the removed government to restore them to power or replace them in possession of the Government buildings? Or should the United States minister and naval commander confine themselves exclusively to the preservation of American property, the protection of American citizens, and the prevention of anarchy? Should a revolutionary attempt of the character indicated be made, there are strong reasons to presume that it would begin by the seizure of the police station, with its arms and ammunition, and this accomplished, the royal palace and the Government buildings containing the cabinet officers and archives would very soon be captured, the latter buildings being situated about one-third of a mile from the police station.
>
> In such contingencies would it be justifiable to use the United States forces here to restore the Government buildings to the possession of the displaced officials? Ordinarily in like circumstances the rule seems to be to limit the landing and movement of the United States forces in foreign waters and dominion exclusively to the protection of the United States legation and of the lives and property of American citizens. But as the relations of the United States to Hawaii are exceptional, and in former years the United States officials

> here took somewhat exceptional action in circumstances of disorder, I desire to know how far the present minister and naval commander here may deviate from established international rules and precedents in the contingencies indicated on the first part of this dispatch.
>
> I have information, which I deem reliable, that there is an organized revolutionary party in the islands, composed largely of native Hawaiians and a considerable number of whites and half whites, led chiefly by individuals of the latter two classes.
>
> This party is hostile to the Queen and to her chief confidants, especially opposed to the coming to the throne of the half-English heir-apparent now being educated in England, and means to gain its object either by forcing the Queen to select her cabinet from its own members or else to overthrow the monarchy and establish a Republic, with the ultimate view of annexation to the United States of the whole islands. A portion of this party mean only the former, and the other portion intend the latter. Failing to accomplish the former, the most of the party would seek the latter alternative. I have little doubt the revolutionary attempt would have been made ere this but for the presence here of the United States ship of war. I still incline to the opinion that the revolutionary attempt will not be made so long as there is a United States force in the harbor of Honolulu. But it would be rash to assume or assert this positively. Therefore I deem it my official duty to ask for instructions in view of possible contingencies.
>
> I may add that the "annexation" sentiment is increasing quite as much among the white residents and native Hawaiian and other workingmen who own no sugar stock as with the sugar planters.
>
> I am sir, your obedient servant,
>
> John L. Stevens.[1]

Secretary of State Blaine's letter acknowledging Minister Stevens' request was never sent to Congress with all of the other State Department records, even though a special request for that letter was made by Congress.

In 1894 when Congress was investigating the Hawaii Affair, Representative Rayner of Maryland, had this to say about the missing replies to Stevens:

> Where are those letters? Does anyone in possession of his reason suppose that there was no correspondence between Mr. Blaine and Mr. Stevens upon this subject? Has anyone the temerity to assert that the letter which I have just read in full,* calling for instructions from Mr. Blaine, remained unanswered? The strongest presumption can always be drawn in the absence of important testimony that it is in the power of parties to produce.
>
> *See John L. Stevens' letter above.

> The correspondence between Mr. Stevens and Mr. Blaine must necessarily have been a private correspondence, because it is not disclosed by the records of the State Department. Mr. Blaine was an ardent annexationist. His policy was a policy of aggression and colonization. Mr. Stevens was the representative of his policy upon these islands. Months before he predicted the very disturbance that took place in January and asked for instructions in case that it should occur. Where are the instructions? I call upon Mr. Stevens, honorable citizen as he has been represented to be, either to produce them or to publicly proclaim that no response was ever made to this letter.
>
> The production of this answer would clear up the whole controversy and would satisfy the mind of the country either of the guilt or of the innocence of the State Department in connection with this entire affair. Its suppression leads me to believe--I wish I could believe otherwise--that the conspiracy antedated for some time the overt act, and that the seizure of the Government and the dethronement of the Queen were the result of a deliberate intent and in execution of the designs and purposes of those whose policy was so ably and faithfully represented by Mr. Stevens upon these islands.[2]

The presumption can still be made that the Department of State declined to submit that letter to Congress and to make it part of the public record because of its damaging contents. However, this presumption can be rebutted by production of that document by the State Department.

A careful check of all of the letters sent to Congress by the State Department reveals that Secretary Blaine's reply should have been dated between March 19 and April 12, 1892 and numbered in the Department of State (Secretary Blaine Series) between numbers 42 and 45.

It is possible that the most critical letters were not included in the numbered sequence released by the State Department, but were filed separately.

Secretary of State Blaine, in a letter to Minister Stevens, specifically requests him to separate his more damaging correspondence in order to permit selective disclosure of them to Congress.

> Mr. Foster to Mr. Stevens. (Confidential)
>
> No. 62
>
> DEPARTMENT OF STATE
> Washington, November 8, 1892
>
> Sir:
>
> Adverting to your current dispatches in relation to the course of political events in the Hawaiian Islands,

> many of which are marked by you "confidential", and for obvious reasons, I desire to suggest that you endeavor to separate your reports into two classes, one of which shall aim to give the narrative of public affairs in their open historical aspect, and the other to be of a strictly reserved and confidential character, reporting and commenting upon matters of personal intrigue and the like so far as you may deem necessary for my full understanding of the situation. Many of your dispatches combine these two modes of treatment to such a degree as to make their publication, in the event of a call from Congress or other occasion therefor, inexpedient, and, indeed, impracticable, without extended omissions.
>
> I am, etc.,
>
> John W. Foster.[3]

2. Direct communication of Secretary of State Blaine with Lorrin A. Thurston and indirect communication with Secretary of State John W. Foster through Archibald Hopkins, Clerk of the U. S. Court of Claims in Washington.

Lorrin A. Thurston's Memoirs of the Hawaiian Revolution indicate that on March 29, 1892, 3 weeks after Minister Stevens wrote to Secretary Blaine, Thurston sailed from Honolulu to San Francisco, then continued on to Washington, D.C. to see Secretary of State Blaine about the State Department's stance on annexing Hawaii should such a revolutionary situation take place. Thurston carried a letter of introduction from Minister Stevens. Thurston made a full explanation to Secretary Blaine:

> We had no intention of precipitating action in Honolulu, but conditions had gone so far that we felt the maintenance of peace to be impossible; we believed that Liliuokalani was likely at any time to attempt the promulgation of a new constitution. If she tended toward absolutism, we proposed to seek annexation to the United States, provided it would entertain the proposal. A nucleus had been formed in Honolulu to bring the plan to a focus, should occasion arise; that nucleus had sent me to Washington to ascertain the attitude of authorities there.

> Mr. Blaine asked: Have you talked to anyone else in Washington on this subject? I answered that I had, mentioning Senator Davis and Mr. Blount.
>
> Mr. Blaine said that he considered the subject of the utmost importance, and continued: "I am somewhat unwell, but I wish you would call on B. F. Tracy, secretary of the navy, and tell him what you have told me, and say to him that I think you should see the President. Do not see Mr. Blount again. I will attend to him. Come to me after you have seen President Harrison." In accordance with the request, I immediately met Secretary Tracy and reported my conversation with Mr. Blaine. Said Mr. Tracy: "I do not know whether you had better see the President or not. But come with me, and we will learn what he thinks." We went to the White House. Mr. Tracy had me wait in an outer room while he spoke with the President. After about a half-hour, the secretary reappeared and beckoned me to accompany him outdoors. Then he spoke: "I have explained fully to the President what you have said to me, and have this to say to you: the President does not think he should see you, but he authorizes me to say to you that, if conditions in Hawaii compel you people to act as you have indicated, and you come to Washington with an annexation proposition, you will find an exceedingly sympathetic administration here." That was all I wanted to know. I called at the State Department again, but Mr. Blaine was still ill and absent from the office, and I never saw him thereafter. Nor did I ever again see Mr. Blount, since Secretary Blaine had requested that I leave Mr. Blount to him.[4]

Lorrin Thurston helped to form the Annexation Club in Hawaii; most of its members were in the Committee of Safety which participated in the overthrow. Thurston arranged for Archibald Hopkins, the Clerk of the U. S. Court of Claims, to represent the Annexation Club in Washington. On November 15, 1892 Thurston received a letter from Hopkins stating the following:

> I am authorized to inform you that the United States Government will pay to Queen Liliuokalani, and those connected with her, the sum of two hundred and fifty thousand dollars, for the assignment to the United States of the Sovereignty of Hawaii.[5]

Lorrin Thurston answered Hopkins' letter on December 14, 1892.

"On Board S.S. Australia.
"December 14, 1892.

"Mr. Archibald Hopkins,
"Washington, D. C.

"Dear Sir:—

"I hereby acknowledge the receipt of your telegram and letter of the 15 Novr. Your communication is of the most important character, and in the limited time since receiving it those more particularly favorable to the proposition therein contained have held a number of consultations upon the subject, and we are unanimously of the opinion that there is no probability of success in attempting to secure annexation within the time that you mention upon the lines suggested.

"The American Minister, with the fullest knowledge of the facts, and himself an enthusiastic advocate of annexation, concurs in this opinion.

"It is difficult, impossible in fact, to state within the limits of a letter, the reasons and difficulties which present themselves at this time.

"In the first place, the diverse nationality and numerous conflicting interests of the population render Hawaiian politics kaleidoscopic to the last degree, resulting in the most unexpected changes and combinations.

"When I was East last May, the radical native party, which in times past has been the strongest supporter of royalty, was actively opposing the Government, openly advocating a republic and annexation and preparing for revolutionary measures.

"They overreached themselves by talking too much before they were ready to act, resulting in the arrests and trials for treason of last summer. Although those implicated were all either acquitted or nol prossed to prevent the moral effect of a probable acquittal, the evidence produced at the trials produced a reaction among the wavering, and the flight from the country of the most active fomenter of the trouble, V. V. Ashford, disconcerted and disheartened the others who had worked with him. The result of the whole was a swinging of the pendulum against annexation and in favor of the Queen. The regard for the Queen, personally, among the natives, is, however, practically nil. The opposition to annexation by the natives is not based so much upon personal support of royalty as it is on a strong sentimental feeling in favor of independence intertwined with a strong race prejudice against foreigners, and the fear that with the loss of independence the control of the Government would be more likely to pass out of their hands, and that less offices would be filled by Hawaiians. The demagogs and anti-annexationists have improved their opportunities in this direction by ringing the changes upon the proposition that annexation would lead to the appointment to the Hawaiian offices of a horde of carpet baggers and political dead beats from Washington.

"Second. You propose to pay the Queen $250,000. This is a large sum, and, if times were troublous and she felt insecure, might be sufficient. Her present income is about $80,000. a year, so that as long as she is reasonably sure that governmental affairs will continue on their present basis it would be a poor financial transaction for her to accept a sum the interest upon which would be only $15,000. per annum. With the feeling now existing among the natives indicated in the foregoing pages, she is in a more independent frame of mind than she was six months ago, and unless forced to take that or nothing, there is no probability that, under existing circumstances, she would take so small a sum. In addition to the objections which would be raised on her part from a financial point of view, she is of a stubborn headstrong disposition, jealous of royal prerogatives and desirous of extending rather than giving up any of the powers and privileges which she now possesses. This is illustrated by her recent conflict with the Legislature upon the question of whether the majority of the Legislature or the individual preference of the Queen should rule in the selection of the Cabinet.

"Although in the long run no characteristic will be so likely to alienate the natives and forfeit the throne, as this disposition to resist to the last ditch the demands for popular control of the government, it is a trait which stands in the way, and will continue to stand in the way, of negotiations for purchasing her rights as long as she feels no fear of losing the position by force, except for a much larger sum than the one named.

"Third. If it is going to be a requirement at the Washington end of the line, that the treaty be approved by the Legislature, two difficulties appear, viz:—The opposition of native members. The opposition of certain planters. The opposition of the natives is based on the reasons given above. Some few of them could, in the short time proposed, be convinced by argument. The remainder would have to be subsidized to the amount of $500. to $5000. each, as would also some twelve to twenty of the native leaders outside of the house. There is scarce one of them who cannot be influenced in this manner, and for the immediate present they can be influenced in the proposed direction in no other manner.

"The number of natives and half castes now in the Legislature is 25, out of a total of 48. Of these, on a vote now taken, the result would probably be, if subsidizing was not resorted to, in favor of it six, opposed, nineteen; of whom probably 15 could be controlled by subsidizing them on the scale above stated.

"Of the 23 foreigners, the vote would probably stand, in favor of it, thirteen; opposed irreconcilably four; doubtful by reason of uncertainty concerning the labor question 3; doubtful for other reasons 3. The doubt raised by the labor question is this: By Hawaiian law contracts for personal labor, can, when executed in accordance with the law relating thereto, be penally enforced. If Hawaii became a part of the Union the U. S. Constitution, it is argued, would prohibit this. The planters dislike the system and would gladly do without it if they saw any substitute therefor. So far as laborers resident at the Islands are concerned, it is almost a dead letter. The drain on the supply of plantation laborers is however so great, through departures from the country and leaving to engage in more profitable work, that it is necessary to introduce annually from abroad, from 3000 to 5000 men to keep up the supply. The laborers introduced are too poor to pay their own expenses. The planter has therefore to advance such expenses. They amount to $75. per man for the Japanese, of whom some 20,000. have been introduced, and somewhat less for Chinamen. So long as the person making the advance can compel the laborer to work for a given period, he is sure of getting his advance back. If there is no method of enforcing repayment of the advance except by civil suit for damage, there is no security for the advance. If any method can be devised by which this difficulty can be overcome, it will remove the obstacle which is now the sticking point in the minds of some of our strongest men —notably Hon. H. P. Baldwin. Another point connected with the labor question is the fear on the part of the same class of planters above mentioned, that the U. S. prohibition of Chinese immigration will be extended to the Islands and perhaps ultimately made to include Japanese, in which case our sole source of labor supply, at living rates to the sugar planter, would be cut off, while the effect of annexation on other industries would be such as to raise the wages of labor in the country to a point which the sugar and rice business cannot pay.

"The reply which has been made to these two labor objections, and also to the fear concerning carpet baggers, is, that the two countries are independent contracting powers, who can agree to unite upon any terms they may agree upon, and that all these points can be satisfactorily covered in the Treaty. The reply made in turn, is, that there is no evidence that the U. S. would consent to any such conditions. Among other things which it will be necessary to know with approximate definiteness before action is undertaken here, is,

"1. Will the U. S. consider it sufficient if the signature of the Queen alone is obtained to the Treaty?

"2. Or; will the U. S. consider it sufficient if the signature of the Queen and Cabinet is obtained;

"3. Or; will it be sufficient if the signature of the Queen and Cabinet and approval of the majority of the Legislature is obtained;

"4. Or; will it be required that in addition to the last above enumerated requirements, the approval of a majority of the voters be obtained.

"5. Or will it be deemed sufficient if the approval of the Cabinet and Legislature is obtained?

"6. Will the U. S. agree to allow the agricultural industries to introduce laborers necessary and hold them under contracts similar to the shipping articles signed by U. S. merchant sailors, until the advances are worked out or paid back?

"7. Will the U. S. agree to allow Asiatics to be brought to the Islands to work in the agricultural industries there, not thereby giving them the right to enter the other portions of the Union if the laws of the U. S. prohibit it.

"8. Will the U. S. agree that the appointments to Hawaiian offices shall be made from among those who have resided a certain number of years, say 5, at the Islands?

"Answers to these questions, or a statement of the views of those who would be influential in formulating the Treaty from the Washington standpoint will be of great value at this end of the line; for these are points which are constantly coming up, and concerning which we are now able to give only conjectural answers.

"There are several other reasons why immediate action is difficult, owing to the feeling which has been aroused between the factions in the Legislature arising out of the long and heated session, during which three Cabinets have been voted out and half a dozen bye-elections held, stirring up a good deal of personal as well as political feeling. A delay will, to a great extent, remove these personal feelings, while precipitate action may stir up opposition from purely factious reasons.

"It is the feeling of many at the Islands that Dr. Smith is not the man at Washington who should be there to properly forward our interests, more particularly in the line of annexation. Will you be so kind as to let me know the feeling of those at Washington with whom he has to deal. He is supported here by the conservative older mercantile men, but does not possess the confidence of those interested in this movement. What would the Washington people think of Charles L. Carter, son of the late H. A. P. Carter; or Frank Hastings, formerly the U. S. Vice Consul at Honolulu, and now first assistant of the Hawaiian Foreign Office.

"The U. S. Minister at Honolulu, Mr. Stevens, has written and forwarded by this mail, an exhaustive despatch to the State Department, concerning the Hawaiian situation. He allowed me to read it, and I heartily endorse every statement in it. He stated that he was going to ask the Secy. to show it to those whom it was desired to acquaint with the situation. It would be well if you could see it, without mentioning having heard of it through me.

"I am in San Francisco on business, returning on the 21st. I shall go to Chicago in Feby. or March and probably be there all through the fair, during which time I could come to Washington at almost any time if deemed advisable.

"Regretting exceedingly that we are not in condition to act immediately upon your suggestions, and hoping for an early reply to the questions herein, together with whatever suggestions you may have to make,

"I remain,

"Yours very truly,

"L. A. THURSTON."

—Foreign Office and Executive, Miscellaneous Local, 1892, Archives of Hawaii. 6

Hopkins replied on December 29, 1892, but the letter apparently did not arrive in Honolulu until January 11, 1893, and Thurston probably did not see it before the events of January 14 to 17, 1893 had occurred. The Editor of Lorrin Thurston's Memoirs states: "... he might have forgotten it, because I found it tucked in a dusty scrapbook, where it well may have lain for forty-three years..."[7]

"Washington D.C.
"Dec. 29, 1892

"Dear Sir

"Yours of the 14th inst arrived on the 25th and I at once made the contents known to the Secretary." [Doubtless Secretary of State John W. Foster.—*Editor*.] "He is of the opinion that the situation in Hawaii being as you represent it, it will be useless to attempt to bring matters to a head during the short time which remains to this administration. Such being the case he did not consider it worthwhile to take up in detail the questions you propound as his views might materially differ from those of his successor. He said however that in his judgment were negotiations to continue, a treaty to be recognized here, as binding must have the assent have the assent of the Executive and of the Legislature, and he thought you could protect yourselves as to contract labor and importation of Chinese, by a provision that all laws in force in Hawaii at the time of the adoption of the treaty *not in conflict with the Constitution of the United States*, should remain in force until repealed by the Hawaiian legislature. The five years suggested as necessary for appointment to office he did not think would be an obstacle. The Secretary declined to express himself in regard to the gentlemen you speak of—further than to say that he did not regard the present minister as a man of as much influence and tact as the late Mr Carter, and that he thought it important for you to have some one here to communicate with & keep you informed. He is disposed to think that the foreign policy of the next administration" [that is, the second administration of President Cleveland.—*Editor*.] "will tend to be if not aggressive at least positive and active, and that in case as seems likely Mr E. J. Phelps should be called to the State Department, he would be likely to be favorable to the acquisition of Hawaii & to do all he could to push it. Referring to your public debt, can you give me details of it, amount how long to run, rate of interest how held &c as it may be of importance in any future negotiation. Should unexpected changes make it seem best for you to act immediately, everything possible to second your plans will be done at this end of the line in the short time that remains. In Mr. Armstrongs letter to me of May 12th he informs me that the arrangement with you under which I have been acting was that I should be paid $75.00 per month with an expectation of further compensation proportionate to results if any were reached. If consistent I shall be glad to receive amount up to February.

"Yours very truly

"ARCHIBALD HOPKINS."

"To
"Hon. L. A. Thurston
"Honolulu"[8]

The second sentence of the above letter indicates that Secretary of State Foster considered it his prerogative to dictate the actual timing of the annexationists' revolt. The fact that conspirator Thurston did not receive these instructions in time accounts for Secretary Foster's subsequent assertion in his letter transmitting the Treaty of Annexation to President Harrison on February 15, 1893 that "The change of government in the Hawaiian Islands, thus chronicled, was entirely unexpected as far as this Government was concerned."[9]

3. Acts of U. S. Minister Stevens in consulting with and aiding Lorrin A. Thurston in his preparation for the overthrow and eventual annexation to the United States.

A letter from Lorrin A. Thurston to Archibald Hopkins, Clerk of the U. S. Court of Claims, dated December 14, 1892 states:

> The U. S. Minister at Honolulu, Mr. Stevens, has written and forwarded by this mail, an exhaustive despatch to the State Department, concerning the Hawaiian situation. He allowed me to read it, and I heartily endorse every statement in it. He stated that he was going to ask the Secy. to show it to those whom it was desired to acquaint with the situation. It would be well if you could see it, without mentioning having heard of it through me.[10]

See this dispatch marked "confidential", dated November 20, 1892, Honolulu, from Minister Stevens to Secretary of State Foster.[11]

In the same letter dated December 14, 1892 to Archibald Hopkins, Lorrin A. Thurston states:

> . . . we are unanimously of the opinion that there is no probability of success in attempting to secure annexation within the time that you mention upon the lines suggested.
>
> The American Minister, with the fullest knowledge of the facts, and himself an enthusiastic advocate of annexation, concurs in this opinion.[12]

Special Commissioner to Hawaii, James Blount, reported to Secretary of State Walter Q. Gresham on July 17, 1893:

> The first and most momentous question with them was to devise some plan to have the United States troops landed. Mr. Thurston, who appears to have been the leading spirit, on Sunday sought two members of the Queen's cabinet and urged them to head a movement against the Queen, and to ask Minister Stevens to land the troops, assuring them that in such an event Mr. Stevens would do so. Failing to enlist any of the Queen's cabinet in the cause, it was necessary to devise some other mode to accomplish this purpose. A committee of safety, consisting of thirteen members, had been formed from a little body of men assembled in W. O. Smith's office. A deputation of these, informing Mr. Stevens of their plans, arranged with him to land the troops if they would ask it "for the purpose of protecting life and property." It was further agreed between him and them that in the event they should occupy the government building and proclaim a new government he would recognize it. The two leading members of the committee, Messrs. Thurston and Smith, growing uneasy as to the safety of their persons, went to him to know if he would protect them in the event of their arrest by the authorities, to which he gave his assent.[13]

Charles T. Gulick, who was Minister of the Interior under the Hawaiian Monarchy during several years of Minister Stevens' tenure, says the following in his statement to Special Commissioner Blount on May 12, 1893:

> Very shortly after Mr. Stevens' arrival in the Kingdom he made it generally known that he considered annexation to the United States as not only the ultimate or "manifest" destiny of the little country, but that it would be just as well to hasten the event, and the American legation immediately became the rendezvous or headquarters of the annexation leaders, such as Hartwell, Judd (the chief justice), Thurston, Dole, Castle, Smith, and others, who frequently met there for the purpose of discussing plans for bringing about the desired end.[14]

The intensity of Minister Stevens' fervor for the annexation of Hawaii is tellingly revealed in his reply to the Blount Report which criticized his role:

> . . . this extraordinary assault on the American colony in Hawaii, antagonizing the American Christian civilization there established at the cost of the lives and labors of noble American men and women, this strange turning back on an American policy of more than half a century, this wanton disregard of the opportunity to assume jurisdiction and ownership of a teritorial and maritime prize, with a clean title and without the cost of a single life, is justly causing profound indignation among the American people.[15]

4. Acts of the Secretary of State John W. Foster and President Benjamin Harrison in expeditiously drafting a treaty of annexation and rushing it to the Senate for ratification before President Harrison was to leave office, and before investigating the facts in Hawaii or honoring the request of Queen Liliuokalani to explain her side of the story.

The proclamation establishing a Provisional Government was dictated by Lorrin A. Thurston from a sick bed to his law clerk, Charles F. Peterson, on Tuesday morning, January 17, 1893. At two o'clock that afternoon in front of the Government Building, Henry E. Cooper read the proclamation "deposing the Queen, abrogating the Hawaiian Monarchy, and establishing the Provisional Government to exist until terms of annexation had been arranged with the United States."[16] Just two days later at about 9:30 a.m. the Claudine sailed from Honolulu to San Francisco with the commission, consisting of L. A. Thurston, W. C. Wilder, W. R. Castle, C. L. Carter and Joseph Marsden, empowered to negotiate a treaty of union with the United States. The committee arrived in San Francisco nine days later on January 28, 1893, proceeded on to Washington the following day, arrived in Washington, D.C. on February 3, 1893 and started interviews with Secretary of State John Foster on February 4th. Meetings continued until February 14, 1893 when a treaty of annexation was signed. John Foster sent the treaty on to President Harrison on February 15th and the same day President Harrison sent the treaty to the Senate with a letter asking for prompt action.

Queen Liliuokalani wrote a letter to President Harrison on January 19, 1893 stating:

> My opponents have taken the only vessel which could be obtained here for the purpose, and hearing of their intention to send a delegation of their number to present their side of this conflict before you I requested the favor of sending by the same vessel an envoy to you to lay before you my statement as the facts appear to myself and my loyal subjects.
>
> This request has been refused and I now ask you that in justice to myself and to my people that no steps be taken by the Government of the United States until my cause can be heard by you. I shall be able to dispatch an envoy about the 2d day of February, as that will be the first available opportunity hence, and he will reach you with every possible haste that there may be no delay in the settlement of this matter.
>
> I pray you, therefore, my good friend that you will not allow any conclusions to be reached by you until my envoy arrives.
>
> I beg to assure you of the continuance of my highest consideration.
>
> (s) Liliuokalani R.[17]

In her statement to Commissioner James Blount in Honolulu, Queen Liliuokalani said:

> It appears that President Harrison could not have taken notice of my appeal, or perhaps he was as anxious as the Provisional Government to annex these Islands, for the 16th of February I find he sent a message to the Senate transmitting the treaty, with a view to its ratification, without having first investigated or inquired into all the conditions or points of our situation, or that of the United States itself.[18]

5. The act of Secretary of State John W. Foster and President Benjamin Harrison in the treaty of annexation of 1893 of requiring that the Executive of the United States have veto power upon the acts of the Hawaiian Government until the time of annexation.

Secretary of State Foster in his letter of February 15, 1893 to President Harrison accompanying the treaty of annexation, states:

> As there is no provision in the existing legislation of Congress whereby the Executive power can provide an organized form of government for new territory annexed to the Union, or extend over it the laws of the United States and cause the same to be executed, it was deemed necessary to continue the existing government and laws of the Hawaiian Islands until Congress should have an opportunity to legislate on the subject; but a provision has been inserted in the treaty for the exercise by the Executive of the United States of a veto power upon the acts of that government during the interregnum.[19]

This act requiring veto power clearly indicates that the Harrison administration regarded the Provisional Government as its government and not an independent sovereignty.

6. Letter of Attorney General Richard Olney dated October 9, 1893 to Secretary of State Walter Q. Gresham admitting "that a great wrong was done under the auspices of the United States Minister Stevens."[20]

United States Attorney General Richard Olney was head of the Justice Department in the administration of Presidents Harrison and Cleveland. Because Attorney General Olney was legal counsel to President Harrison, attended cabinet meetings and had first-hand knowledge of the administration's involvement in the Hawaiian Affair, his letter to Secretary of State Walter Q. Gresham following a Cabinet Meeting discussing the Blount Report is especially significant because it states the previous administration's stance:

> . . it must ever be remembered that the Stevens' government is our government; that it was set up by our Minister by the aid of our naval and military forces and was accorded the protection of our flag; and that whatever be the views of this administration (Cleveland's), its predecessor (Harrison's) practically sanctioned everything Minister Stevens took upon himself to do.[21] (Parenthetical material added for clarification.)

This statement accounts for Secretary of State Gresham's instruction in his letter to U. S. Minister to Hawaii, Albert S. Willis, on October 18, 1893 (one week after receiving Olney's letter) that Queen Liliuokalani, upon being reinstated, grant "full amnesty to all who participated in the movement against her." [22]

Because the men of the Provisional Government were so obviously the agents of the United States, they could not be permitted "to be hung or banished, or despoiled of their estates."[23] Attorney General Olney's letter is appended herewith.

7. Attorney General Olney's letter to Secretary of State Walter Gresham on October 9, 1893, Secretary of State Gresham's letter to President Grover Cleveland on October 18, 1893, President Cleveland's Message to Congress on December 18, 1893, and House Resolution of February 7, 1894, all admit to the great wrong done by the United States against the Hawaiian People.

Attorney General Richard Olney:

> There is no question, it seems to me, that a great wrong was done under the auspices of the United States Minister Stevens when the regular constitutional government of the Queen was supplanted and the present, so-called provisional government installed in its stead.[24]

Secretary of State Walter Q. Gresham:

> Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice.[25]

President Grover Cleveland:

> I believe that a candid and thorough examination of the facts will force the conviction that the Provisional Government owes its existence to an armed invasion by the United States. Fair-minded people, with the evidence before them, will hardly claim that the Hawaiian Government was overthrown by the people of the islands or that the Provisional Government had ever existed with their consent. .

> The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.
>
> But for the notorious predilections of the United States minister for annexation the committee of safety, which should be called the committee of annexation, would never have existed.
>
> But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.
>
> But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the Provisional Government from the steps of the Government building.
>
> And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Stevens's recognition of the Provisional Government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the Provisional Government, even for a time and for the sole purpose of submitting her case to the enlightened justice of the United States. . .[26]

House Resolution of February 7, 1894:

> Resolved, First. That it is the sense of this House that the action of the United States minister in employing United States naval forces and illegally aiding in overthrowing the constitutional Government of the Hawaiian Islands in January, 1893, and in setting up in its place a Provisional Government not republican in form and in opposition to the will of a majority of the people, was contrary to the traditions of our Republic and the spirit of our Constitution, and should be and is condemned.
>
> Second. That we heartily approve the principle announced by the President of the United States that interference with the domestic affairs of an independent nation is contrary to the spirit of American institutions. And it is further the sense of this House that the annexation of the Hawaiian Islands to our country, or the assumption of a protectorate over them by our Government, is uncalled for and inexpedient; that the people of that country should have had absolute freedom and independence in pursuing their own line of policy, and that foreign intervention in the political affairs of the islands will not be regarded with indifference by the Government of the United States.[27]

The House Resolution was passed with 173 yeas, 4 nays, and 174 not voting.

After the annexation of Hawaii to the United States under the McKinley Administration in August of 1898, President Cleveland wrote these words to his former Attorney General, Richard Olney:

> Hawaii is ours. As I look back upon the first steps in this miserable business and as I contemplate the means used to complete the outrage, I am ashamed of the whole affair.[28]

The brief documentation herein presented indicates that Lorrin Thurston, the local leader of the annexationists, U. S. Minister John L. Stevens, and the United States Department of State were working in concert to accomplish the annexation of Hawaii to the United States against the will of the Hawaiian People.

We sincerely request that before deciding this issue, the United States Congress carefully review all of the documents reviewed by the House and Senate in 1894 and 1898, and seek out the letters, telegrams, and messages of the State Department which were previously withheld from Congress.

[illegible]
K. 1. 41, Folio No. 7747-17
[illegible]
B

Private.

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C.

October 9, 1893.

Hon. Walter Q. Gresham,

Secretary of State.

My dear Judge:

The Hawaii business strikes me as not only important, but as one that may require great delicacy in the handling.

There is no question, it seems to me, that a great wrong was done under the auspices of United States Minister Stevens when the regular constitutional government of the Queen was supplanted and the present, so-called, provisional government installed in its stead.

There is no question either, I think, of the good sense, ~~and~~ the statesmanship ~~and~~ the ~~sound~~ morality of your proposition that this great wrong should be rectified, and that to rectify it the status quo at the time of its perpetration must as far as possible be restored.

The Queen's Government was overthrown by an exhibition of force-- if it can be reinstated by a like exhibition of force without actual resort to it, there is not, it seems to me, any real ground for hesitation. Whether the exhibition of force in each case be or be not a technical act of war, the undoing of the original wrong by the same means by which it was consummated, would hardly be criticized in any quarter and would probably be universally commended as an act of substantial justice. It would be the short and ready way out of the complication if the Stevens government were a thing of a few hours or even a few days existence.

But the present situation is not so simple. The Queen has been in our hands, and the Stevon's government has been in authority with our acquiescence for many months. All parties have been awaiting the action of the United States. In the interim the Steven's government has hadcomplete possession ~~control~~ of the country and all its resources, and may have acquired such control of them and such ascendency over the inhabitants that it can be displaced only by actual force and after more or less loss of life and destruction of property.

In any event, and whether the Stevens government will be fought for or not, it has in this interval been receiving the revenues of the country, collecting the taxes, administering justice and enforcing the laws ~~generally~~ and generally exercising all the functions of a legitimate government.

This being the situation, let the worst be assumed, namely, that, as a matter of fact, the Stevens government cannot be ousted exceptby the application of superior military force. To that course there are, it seems to me, various formidable objections. One is, that a resort to military force would be cleary an act of war however righteous the cause, and would be beyond the President's constitutional power. Another is, that to hand over to the Queen's government a country more or less devastated, and ~~its~~ a people more or less diminished in number and alienated in feeling by a contest of arms, would produce a result that would be but a poor substitute for that peaceful control over an uninjured territory and undecimated population which the Queen's government enjoyed at the time of United States Minister Steven's lawless intervention into its affairs.

Still another, and to my mind, an insuperable objection, is this. The Stevens' government will not be fought for unless its adherents are sure of a strong backing not merely in warlike force, but in the intelligent public sentiment both of Hawaii and of this country.. If such sentiment has grown up and now exists in Hawaii—and we know ~~that no doubt to a~~ how large an extent ~~was produced~~ it prevails in this country— the administration in undertaking to reinstate the Queen's government by force of arms would be open to the reproach of sacrificing the interests of the country and its people to the interests of the Queen's government and of her dynasty. It would not be sufficient to urge that the Queen's government had been unlawfully deposed by the United States, and that they were merely endeavoring to right that wrong.

The answer would be that the Queen and her government were not the only and first things to be considered; that the paramount objects of our care should be the people of Hawaii and ~~her~~ their interests; that we have no right to redeem the original wrong by the commission of another still greater wrong, to wit, the imposition upon Hawaii of a government not wanted by its people; and that if through their experience of the Stevens' government, or otherwise, the people of Hawaii, ~~who~~ are now sincerely opposed to any restoration of the Queen's government, the United States would have no right to insist upon ~~this~~ the restoration, but must find some other means of compensating the Queen and all others immediately injured by the unlawful setting up of the Stevens' government.

The above suggestions are not made because serious resistence by arms to anything the United States may do in Hawaii is to be reasonably anticipated. It is wholly unlikely. At the same time it is the unexpected that proverbially happens in politics, and in shaping its present policy, the administration ought, so far as it can, to take into consideration every contingency however remote. Let it now be assumed that any contest of arms by the Stevens' government is out of the question--the administration in determining its course upon that theory cannot, I think, properly lose sight of certain considerations of vital importance. The Stevens government is the lawful government of the country and has been and is recognized as such by the United States and by foreign nations. However legitimate in its origin, it has since governed by the consent of all parties. It follows that its acts, unless shown to be mala fide, ought to be recognized as legal to all intents and purposes. It follows that all the officers of that government, from the highest to the lowest, ought to be exempt from any loss or punishment or from any fear of loss or punishment in consequence of their official actions. In my judgment, the honor of the United States is hardly less concerned in securing justice and fair play for the Stevens' government and its members and adherents, than in the restoring to power of the Queen's constitutional government. It must ever be remembered that the Stevens' government is our government; that it was set up by our Minister by the aid of our naval and military forces and was accorded the protection of our flag; and that whatever be the views of this administration, its predecessor practically sanctioned every thing Minister Stevens took upon himself to do. Under such circumstances, to permit the men who ~~are~~ were Stevens' instruments in this setting up and carrying on of the Stevens' government, and who undoubtedly acted in good faith and in the sincere belief that Stevens correctly represented his government, [illegible] to be hung or banished, or despoiled of their estates, or otherwise punished for their ~~action~~ connection therewith

with the Stevens' government, or to leave them exposed to the risks of any such consequences, would, it seems to me, be grossly unjust and unfair and would deservedly bring the government of the United States into great discredit both at home and abroad.

The practical conclusions I arrive at from the foregoing are these:

(1) All the resources of diplomacy should be exhausted to restore the status quo in Hawaii by peaceful methods and without force.

(2) If, as alast resort, force ~~has seemed~~ is deemed to be necessary--by force I mean an act or a course of acts amounting to war--the matter must be submitted to Congress for its action.

(3) In addition to providing for the security of the Queen's person, pending efforts to reinstate the Queen's government and as a ~~reason for~~ conditions making such efforts, the United States should require of the Queen and any other legal representatives of her government, full power and authority to negotiate and bring about the restoration of her government, on such reasonable terms and conditions as the United States may approve and find to be practicable.

Among such terms and conditions must be, I think, full pardon and amnesty for all connected with the Stevens' government who might otherwise be liable to be visited with the pains and penalties attending the crime of treason.

(4) The negotiations above recommended would, I have no doubt, have a successful issue. It would be understood that the power of the United States was behind them, while there would be and need be no statement nor intimation of the necessity for the intervention of Congress, if it were found necessary to reenforce the negotiations by the use of the war ~~[illegible]~~ power. The negotiations being in the hands of the United States, and it being known that it would insist upon ~~our deal-ing~~ fair dealing not merely for the Queen's government but for all others concerned, the chief motive for standing out on the part of the adherents of the Stevens' government would be taken away. While in doubt as to the policy of the restored Queen's government towards them, they would naturally be disinclined to consent to any change in the existing status. That doubt being dispelled and all apprehension of severe or vindictive measures towards them being removed, it is to be anticipated, I think, that they would readily follow the course recommended by the United States.

I trust you will not regard this as an unnecessary intrusion upon your time or an uncalled for meddling with ~~the~~ affairs especially in your care. Neither charge me in your thoughts with imagining that there is anything especially valuable in it or anything that would not readily occur to yourself. I write because of my general interest in the subject and because an expression of opinion from each member of the Cabinet seemed to be invited last Friday. Wishing I had something better to offer, I am-

Very truly yours,

Richard Olney

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Senator MATSUNAGA. Thank you very much, Yola, for your most competent presentation. I'm sure it will help to turn around even the members of the Commission who subscribe to the majority report.

Now we have still a number of witnesses, but we are scheduled to reconvene at 2 o'clock. So those of you who have registered to testify may report back at 2 o'clock.

You wil be called in the order in which you registered, so those of you who still wish to be called upon to testify please register at the front desk Then be sure to give your name and address so that, if you wish, we will send you a copy of the report. And even those of you who do not testify, if you wish a copy of the report, please submit a request at the desk. We will see to it that as soon as the report is published, we will mail you a copy from Washington.

So the committee now stands in recess until 2 p.m.

[Recess was taken.]

AFTERNOON SESSION

Senator MATSUNAGA. The committee will please come to order. This morning, we called upon two witnesses. We'd like to begin with them, if they're now present. Alma Cooper? Is Alma Cooper here now? Yes. She's the provost of the Maui Community College. We'd be happy to hear from you, Alma.

As I indicated earlier, we do have a time signal there. It's a 5-minute time signal, and when the red light comes on, you have a minute to summarize. But if you feel you have something really important that the committee should hear, then you can take another extra minute.

All right.

STATEMENT OF ALMA KAIAMA COOPER

Ms. **Cooper.** Thank you very much. Hon. Senator Spark Matsunaga, and Hon. Representative Daniel Akaka, I'm Alma Cooper, and I am here today to offer testimony on behalf of myself and my six brothers and sisters, our mother and my three sons. I do not represent Maui Community College, nor the University of Hawaii.

What I want to do is to try very hard to point out that the United States of America did participate in the overthrow of the monarchy. And I have been able to utilize and use the information that comes from these very tattered pages of a very old manuscript that is entitled, "In the Senate of the United States, message from the President of the United States in answer to the Senate resolution of February 16, 1894, and transmitting copies of additional dispatches, and exhibits thereto, relating to Hawaii."

In this manuscript, it points out that John L. Stevens and a battallion of American marines armed with rifles and cartridge belts from the American warship, *Boston,* joined up with three volunteer American civilian companies to establish the provisional government and simultaneously abrogated the Hawaiian monarchy on January 17, 1893. The small sovereign Hawaiian Government had no military force to take up arms against the forceful intervention of American military. The American minister assisted by the American military was also responsible for the continued existence of the provisional government for the Hawaiians believed "that if they made an effort to overthrow it (the provisional government) they would encounter the armed forces of the United States."

A text by John L. Stevens on that very day of July 17, 1893—and I'd like to extract a few sentences from his text—says that in the name of the United States of America,

> I hereby, in the name of the United States of America, assume protection of the Hawaiian Islands for the protection of life and property, and occupation of the public buildings and Hawaiian soil.

Capt. C.C. Wiltse, captain, U.S. Navy, commanding the U.S.S. *Boston,* also sent a telegram to John Foster, and he described the American invasion as:

> Today at nine a.m. in accordance with request of the Provisional Government of Hawaii, the United States minister plenipotentiary placed the Government of Hawaii under United States protection during negotiations, not interfering with the execution of public affairs.

Now, there were a number of people in high levels in the U.S. Government that recognized the provisional government, as for example, on January 28, 1893, John W. Foster, Washington, sent a telegram to Mr. Stevens, in which he said:

> Your course in recognizing an unopposed defacto government appears to have been discreet and in accordance with the facts. The rule of this Government has uniformly been to recognize and enter into relation with any actual government in full possession of effective power with the assent of the people. You will continue to recognize the new government under such conditions.

Also, another person of the high levels of the Government, Secretary Tracy, sent in a telegram to Admiral Skerrett on January 28, 1893, the following message:

> The present Provisional Government of Hawaii is recognized by this Government and by all foreign governments except England. Be vigilant in protecting American interests and be prepared to meet any danger by which such interests may be threatened.

The wheels for moving annexation through Congress happened almost simultaneously with the January 17, 1893, overthrow of the monarchy, as is evidenced in the communication from John W. Foster, Department of State, Washington, Febraury 16, 1893. This reads:

> Sir: I append copies of my telegram to you of the 15th instant in relation to your recent bereavement and to the treaty annexing the Hawaiian Islands to the United States. I am, John W. Foster.

It is also very evident that there was a very close relationship between the President of the United States and President Dole, President of the Provisional Government, for on March 1, 1893, President Benjamin Harrison sent a communication to President Dole in which he acknowledged receipt of the news and the establishment of the Provisional Government and Dole's new position as President. And he used the very strong term, "Great and Good Friend," as his salutory greeting for President Dole. And President Harrison expressed his "earnest desire to maintain and strengthen the strong friendship between the United States and the Hawaiian Islands."

History reports that President Harrison left the office and he was succeeded by President Cleveland, who then ordered that a Mr. Blount undertake an investigation of the Hawaiian Islands situation. And Mr. Blount's report allowed the President to conclude that:

> . . . the Provisional Government was not established by the Hawaiian people or with their consent or acquiescence, nor has it since existed with their consent. The Queen refused to surrender her powers to the Provisional Government until convinced that the Minister of the United States had recognized it as the de facto authority and would support and defend it with the military force of the United States, and that resistance would precipitate a bloody conflict with that force.

Interestingly enough too, in this manuscript, and year later, there is a great big celebration in Honolulu, and all the people who were participating as supporters of the Provisional Government convened; and their salutory remark to one another was "Follow Annexationists."

And J.D. Castle said in his speech—and I'd like to quote part of his speech:

> One year ago today noon, we stood on a platform with two planks—the abolition of the monarchy and absorption into the United States. On the 24th day of last month, the Provisional Government drove the last nail in the coffin of Hawaiian Monarch. By the strength of our own right arms and steadfast purpose, united in all that is essential, the last article of our platform will be accomplished, and our mother in Washington will take to herself her own. In Hawaii, every political highway and byway should lead to annexation. We wish no permanent government nor anything else which does not lead to annexation; no change which does not make for that; no republic but the Great Republic.

We know what the subsequent history of Hawaii is. These annexationists were directly involved in the overthrow of the monarchy and they later negotiated with the U.S. Government for annexation—an act in and of itself which was wrongly conceived and accomplished by the American band of insurgents with the help and protection of the U.S. Government.

The majority report of the Native Hawaiian Study Commission perpetuates the same deceit and callous disregard for a "small and feeble nation of people"—such a quote was found in references to the overthrow in 1892—in much the same way as their American forebears of this great country. History is repeating itself in the Native Hawaiian Study Commission process in the personage of six members of the Commission who chose to gloss over and disregard historical facts in preference for their own vested interests.

Members of the U.S. Senate Committee on Energy and Natural Resources, I do hope that in the propriety and wisdom of Congress, that declarations necessary to right the grave injustice and wrong committed when "the United States impaired the independent sovereignty of the Hawaiian Government by substituting the American flag and the power of the United States in January 1893" by accepting the minority report of the Native Hawaiians Study Commission.

Thank you very much.

Senator MATSUNAGA. Thank you. Thank you, Alma. It's nice to see you again. It was only a few days ago that we visited with each other in Washington, DC, the Nation's Capital.

Our next witness is Joyce Kainoa.

Joyce is not here?

And then we'll go to Mr. Blazo Andrea Ahonui Pavichevich.

STATEMENT OF BLAZO AHONUI PAVICHEVICH

Mr. PAVICHEVICH. Mr. Chairman, I'm grateful for this opportunity. I make two promises: I shall not ask you walk down the street backward, nor shall I ask you to chew your food twice.

This is a letter that I wrote to the President, Ronald Reagan, Wednesday, February 1, 1984, 6,500 miles away from here in North Miami, FL:

> Intent: Formula for Peace. A native declares. In the beginning God created the Heavens and Earth. A plain truth—in English—that we know—in fact—long before the birth of our nation and our generation. In the beginning was the word, and the word was with God and the word was God. Again—in plain truth—and in English—a fact—in the birth of our nation and the generations of the precious heritage of the golden tree. And in that golden tree there is no tradition to uphold but we have made a declaration of those things which are most surely believed among us. We are a nation of fifty states on a land of established law and order from that very beginning.
>
> We have never claimed to be perfect but we have pioneered towards that perfection from one generation to another. Your very declaration of a peace force in Lebanon to me is very simple to understand. But you are not an experienced military man; therefore, I accept your desires and support them with my very brath of life.
>
> And in that acceptance, I share with you what I declare to be the truth and the whole truth, so help me God. And the God of help is the only God in whom we trust.
>
> I kinohi ka logou, me ke akua ka logou, a o ke akua no ka logou. This is not a translation, but original American in our heritage of pioneering that golden tree. In the peace you seek I know is viable if you and your family could only humble ourselves as a small child and abide in the God in whom we trust.
>
> Our nation is in the generation that I call the "now generation", that are yet on our knees in a prayer of thanksgiving. But we have a baby sister state that has never been on its knees, even to this day, but stands tall unto the Lord and shall never change, even though their heritage—by declaration—has been taken from

them long before you and I were created. The Native Hawaiians have peace in their very soul from the beginning, and they have given breath of life to the very perfection that we seek. And I want it to be clearly understood that I mean all the people of Hawaii, not just the Native Hawaiians, because they have shared the good news. And the inequity of the land can be cured in one day.

Pull the Marines out of the Middle East in time for them to be transported to Oahu, just as they are. Have them meet me at Pearl Harbor, oh-four-hundred March 4th, 1984, and give each one of them two leis of aloha (provide me with an all-white Marine uniform with a sidearm .45 and an M-1 and eight leis). We shall march to the Palace, where the Marines will stack their arms and in single file march through the throne room and cast one lei in that throne room.

We shall then continue to march to Kawaiahao Church where we can cast the second lei, and I in a prayer of repentance: I can restore the King of Kings and the Lord of Lords as the head of the State, and bless, the motto: ua mau ke ea o ka aina i ka pono, as perfect.

Then, in August, our statehood celebration day, you and your family join with me, and all the presidential candidates, on the Island of Maui, the seat of the new stone and the new mountain. The image is broken, and the first resurrection of six thousand years shall continue the flow towards everlasting life of our golden tree in peace. The way has already been prepared, but you must understand that this must be done in honor of our mothers and fathers. March the 4th is my mother's birth anniversary. God has a caddy. I know that you don't need me, but I do need you.

In the U.S. Marine Corps, the Latin, "semper fidelis," carries a dual meaning which gives each of us a clear choice: One, hooray for me, and the other is, screw you. Or, always be faithful.

And the timing of this hearing is very profound, in that it permits me to stand firm on the promises of the God of love so ever present in our trust.

Ironically, Mr. Chairman--I signed you first nomination papers when I was in Puloa. And you and Senator Inouye represent the youth of our generation that has successfully defended the north star in the hundredth battalion of the four four two. And I in combat with the second Marine division defended the Southern Cross. In Representative Daniel K. Akaka, I have my former choir director.

But today we are more than just a public hearing. We are a family expressing our love for the golden tree on the land that holds our roots. And that love has a formula which I shall share in Kihei on Sunday, this our Easter Sunday. We are the kingdom of God, the church, and on this most precious land is the State and we are one. And in the name of the almighty God I proclaim this love well-grounded in our national Constitution.

We know Pearl Harbor. Let us remember the Alamo.

He Kukui uuku: a small lamp. He kukui hou: a new light.

And it should be noted that my father was shipped out of Yugoslavia to save the blood line in World War One, and I shall pray that the haoles on the mainland and Alaska shall wake up to the very basic love that we have to offer.

Senater MATSUNAGA. Thank you very much.

Our next witness is Mr. Daniel Dancil. We'll be happy to hear from you, Dan.

STATEMENT OF DANIEL DANCIL

Mr. DANCIL. Senator Matsunaga, Congressman Akaka, makaiana aloha.

Aloha to the members of the Senate subcommittee. We extend our mahalo for this committee to hear our needs and concerns as native Hawaiians and citizens of these United States.

My name is Daniel Dancil, testifying to you today as a native Hawaiian, as defined in Public Law 96-565, title 1.

We as native Hawaiians today are faced with the task of self determination, self motivation, and for the betterment of our conditions.

The Native Hawaiians Study Commission created under Public Law 96-565, title 3, were to conduct a study of the culture, needs and concerns of the native Hawaiians.

During the course of study and public hearing held by the Commission, native Hawaiians were presented with a majority report that gave birth to another claim called the minority report. Commendable studies and extensive reports by the Commission and the individuals on the culture and needs are shown in volume I. However, the shortfall of volume I are expressed in volume II as some of the concerns have not been met.

We native Hawaiians cannot turn away from the events that occurred during the years that Hawaii was under one Ali'i system. There is information in books and records that gives insight into these events. In volume II what the Commissioners hope these events. In volume II what the Commissioners hope to bring to light is some of the recommendations upheld by the majority report as being detrimental to the people of Hawaii. One of these concerns is whether the United States be held responsible for the actions of its agents causing eventually the overthrow of the Hawaiian Monarchy. Volume II, the minority report, must be commended in bringing out some of the facts that the Nation should be made aware of.

However, what volume I and volume II fall short on is the issue of the blood quantum. I have for years took the stand that the definition of "native Hawaiians" be that of the Hawaiian Homes Commission Act, the Admissions Act of 1959, and Public Law 96-565, title 1, which define "Native Hawaiian" as: "A descendant of not less than one-half of the blood of the races inhabiting the Hawaiian Islands prior to 1778."

"Native Hawaiians" have long sought for the betterment of our conditions. It is almost within our reach. That is why we must persevere in seeing that our rights be met. We have seen a few ways that our needs were met in the form of the Hawaiian Homes Program. Many native Hawaiians think that this is the only way their needs and concerns can be served. They do not understand the Admission Act of 1959, section 5(f), where countless programs and benefits are available to us. The Office of Hawaiian Affairs created during the 1978 Constitutional Convention is a program that is a byproduct of the Admission Act. Here we see how a native Hawaiian program can help all the people of Hawaii. There are other programs available that have not occurred.

We hope the Congress accepts the recommendations given in the volume II minority report, "Claims of Conscience," along with this testimony and other attached claims by native Hawaiians and their descendants, that I have attached. Let us hope that the future brings the majority for the minorities.

I would like to thank the committee for their time and effort and allowing me to testify.

I will give the originals of the petitions to the clerk, since you folks have just the copies.

Thank you.

[The declaration and claims follow:]

Native Hawaiian
DECLARATION AND CLAIMS

WE, the NATIVE HAWAIIANS (Public Law 96-565, Title I), are the traditional, rightful, legal occupants and users of the land, water, sea, mineral and all other resources as farmers, fishermen, hunters, manufacturers, miners, tradesmen, professionals, and residents, who have nurtured and permeated the Hawaiian Archipelago.

We, the NATIVE HAWAIIANS, have inhabited and occupied these archipelago and exercised our traditional rights since time immemorial to sustain and maintain our culture and primordial interests under all of the governments exercising jurisdiction over the Hawaiian Archipelago.

We hereby present to the President and the Congress of the United States of America, and to all to whom this may concern, this DECLARATION AND CLAIMS to the Hawaiian Archipelago, and declare our plenary and equal rights to protect our fundamental rights and freedom and our Hawaiian Admission Act Sections 4 (Hawaiian Homes Commission Act, 1920) and 5(f) land trusts.

IN WITNESS WHEREOF, We, the NATIVE HAWAIIANS, and those who believe in this DECLARATION AND CLAIMS, hereby subscribe hereon our names and sacred honor.

Adopted in the City and County of Honolulu, State of Hawaii, this 11th day of December, 1982, A.D.

	Name	Community	Percentage Hawaiian
1	[illegible]	[illegible]	[illegible]
2	Bernadette J I Kaniohue	Makawao	25%
3	[illegible]	Wailuku	1/2
4	[illegible]	[illegible]	[illegible]
5	[illegible]	[illegible]	[illegible]
6	[illegible]	[illegible]	[illegible]
7	Jeffrey Cabrigar	Pukalani	1/4
8	David Rosa	MAKAWAO	1/4
9	[illegible]	Makawao	[illegible]
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Native Hawaiian Land Trust Task Force ------------ 1021 University Avenue, Room 2, Honolulu, Hawaii 96826

Native Hawaiian
DECLARATION AND CLAIMS

WE, the NATIVE HAWAIIANS (Public Law 96-565, Title I), are the traditional, ightful, legal occupants and users of the land, water, sea, air and all ther resources as farmers, fishermen, hunters, manufacturers, [illegible], radesmen, professionals, and residents, who have nurtured and permeated the awaiian Archipelago.

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	Name	Community	Percentage Hawaiian
1	[illegible]	[illegible]	90%
2	[illegible] H. [illegible]	[illegible]	50%
3	[illegible]	[illegible]	
4	(Wighton) K. Eaton	Wailuku	75%
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Native Hawaiian Land Trust Task Force ------------ 1021 University Avenue, Room 2, Honolulu, Hawaii 96826

Native Hawaiian

DECLARATION AND CLAIMS

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	Name	Community	Percentage Hawaiian
1	[illegible]	Keanae	25%
2	[illegible]	Keanae	[illegible]
3	Joseph Young Hon Keanae		50%
4	[illegible]	Keanae	25% +
5	Margaret Fujishiro	Keanae	50%
6	Esther Kaililaau	Keanae	100%
7	Elaine Pulley	Keanae	none
8	[illegible]	Keanae	50%
9	[illegible]	Keanae	none
10	Helen Kuoha	Keanae	50%
11	Mary Kaaumoe	Keanae	75%
12	Awapuhi Carmichael	Keanae	75% +
13	Maggie [illegible]	Keanae	50%
14	HENRY H KAHAHANIC Sarah Kaahanui [illegible] power attorney	Keanae	100%
15	Sarah Hueu Kaaumoe	Keanae	75%
16	Vincent Hueu, Jr.	Keanae	75%
17	[illegible]	Keanae	50%
18	Emmaline Akana	Keanae	50%
19	William Kalehua	Keanae	~~50~~ 100%
20	Dora ~~Kaan~~ Kalehua	Keanae	none

Native Hawaiian
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	Name	Community	Percentage Hawaiian
1	[illegible] Kimokeo	Keanae	75%
2	Harry K. Pahuka Jr.	Keanae	25%
3	Samuel E. Kaauamo	Wailuanui	75%+
4	Joseph K. Akin Jr.	Keanae	75%
5	Renee M Akin	Keanae	0%
6	Evelyn Akin	Keanae	75%
7	Libby Akina	Keanae	99%
8	Samuel Akina	"	50%+
9	[illegible] J. Akina	Keanae	37%
10	Helen Kuoha	Keanae	50%
11	Adam Puha Jr.	Keanae	75%
12	Mary Jane Kaauamo	Keanae	75+%
13	Ben [illegible]	Keanae	0%
14	Carol Carmichael	"	50%
15	John Koko	Kahakuloa	100%
16	Lelio K. Kalahanui Sr.	Kahului	50%
17	Cyrilla A. Kalahanui	Kahului	75%
18	Lelio K. Kalahanui Jr.	Kahului	57.5%
19	Kadie Kalahanui	Kahului	25%
20	John K. Kalahanui	Kahului	57.5%

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	Name	Community	Percentage Hawaiian
1	Michael M Kahe	Hon Oahu	100%
2	Alexander Morris	Hon. Oahu	50%
3	Marie France Morris	Honolulu - Oahu	-0-
	Apolonia Kealohanui Day	Keaau Hawaii	100%
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Senator MATSUNAGA. Fine, and thank you very much, Dan. You can rest assured that the declaration and claims that you presented will appear in the record.

Our next witness is Lavae Makuakane.

STATEMENT OF LAVAE MAKUAKANE

Ms. MAKUAKANE. Mr. Matsunaga, Mr. Akaka, I have come before you this day as a Hawaiian, to plead our needs to you. I don't think we have to go over the overthrow of Queen Liliuokalani. The history books prove over and over again, with our manuscript, the wrong that has been done to us. And which volume I of the commission tends to ignore.

The question is, what that has done to us as Hawaiians? It has told us in volume I that we are not smart or aggressive enough to hold onto our kingdom. Therefore, don't say to us—it showed us that a few men with money and power back of them can tell you what to do, with no apologies said, and to stay in the background. Don't make waves.

The issue today is what in fact has the overthrow done to our people today? Our people go from one source to another, looking for their historical background and culture. Our kupunas, for example, are fighting to have a desert island with no real source of water, named Kahoolawe, returned to us. They dare not ask the strangers with money to leave their good land alone.

Past experience has taught them this does not work. But maybe we can start with Kahoolawe.

One half of the high school graduates of 1983, the class of 1983, of Hawaiian ancestry in the County of Maui never make it past the first semester of college. The average Hawaiian student, using my own experience this year with my daughter, has very little scholarships open to assist them. We are still overshadowed with the idiom, "those lazy Hawaiians."

As a group of couples got together with anticipation of being able to buy our own homes in a low-income county project housing, all of us had waited 5 years or more for Hawaiian homes to open, and our names are still on the waiting list. We came face to face with the realities of life.

If we were not picked for Government assistance which are made available to 10 families, then we had to go with a conventional loan. The loan companies have a down payment of $10,000, and a mortgage payment of $1,000 a month, for the next 40 years. One couple out of six in our group qualified for Government assistance. The rest of us could afford a home if no emergency occurred in our families for the next 40 years.

What would the reparations money do for us? My recommendation is to this commission, if you are really here to help us, is one: We need legal aid and assistance so our kapunas can save what little lands they now have in their possession for further generations. Our young people need more assistance in every phase of education. They need scholarships to go on with their education. Three, our families need assistance with funding to own our own homes where we can borrow money with low interest rates so more homes can be made available to us.

Please right the wrong that we have lived with for so long. Please adopt volume II so that we can hold up our heads with dignity. Don't let it come to a day when once again throughout this land will be heard the cries of the Hawaiians that our kupunas told us happened at the overthrow of the government of the Hawaiian kingdom when these words were sounded throughout our island. Awe ka ohana, awe ka poe oka aina, awe ka poe o hawaii nei, awe awe awe.

Senator **Matsunaga**. Thank you very much, Mrs. Makuakane, for your moving words.

Our next witness will be Ed Kaiwi. Is Ed here? Ed, we'll be happy to hear from you.

STATEMENT OF ED KAIWI

Mr. **Kaiwi**. Aloha. My name is Ed Kaiwi, and I represent the Honolulu Community Association, on behalf of Bill Chang, who's the president of the Honolulu Community Association. And I've submitted this 10 pages to Mr. Matsunaga and the people up there, on behalf of the Hana people of the original Wailuku Water Cross Agreement.

We've all been talking about the overthrow, but we need to know what the overthrow was caused by; how it really happened. With these documents, it explains for itself that Mr. Hopkins was the Secretary of the U.S. Government, and Alexander, W.P. Alexander, J.P. Alexander, Mr. Sinclair, and Mr. Morgan, part of the conspiracy. But it all started way before the overthrow, and on this 10 page paper, it explains for itself, so I don't have to explain the whole thing for you. You can read it, when you have the time.

Now, this other paper that I submitted to you is an affidavit on behalf of the Water Cross Agreement for Maniko Keanae (phonetic) and Guelo (phonetic). And this affidavit is part of the Water Cross Agreement that the State and this Maui Irrigation had made in 1940. The whole paper explains everything. I can't tell you from the paper. I can only tell you how I feel.

So I just wanted to submit this, and just—can I play the flute?

[The paper follows:]

HANA COMMUNITY ASSOCIATION
P.O. Box 393
Hana, Maui, Hawaii 96713
8 November, 1983

Documents, copies of which are enclosed, display discrepencies in the current claims of ownership by the State of Hawaii and the the licenses issued on the Wailuku Water Course to the East Maui Irrigation Company.

The original Wailuku Water Course Agreement created at the time of the Great Mahele is recorded in the State Bureau of Conveyances under Liber 17 pages 1-478.

The Wailuku Water Course Agreement was signed by sixty six individuals who together registered their interests in the ownership of the water course. Of those sixty six names, only eleven names represent other than Hawaiian families. These names are: J.D. Hanskopt (sp?), WP Alexander, J.M. Alexander, E. Bailey, Landford (sp?) for Maui Mill; Henry Chamberlain, S. Hallock, J. McIntyre, Henry Connant, J. Sinclair and A.P. Jones, who represent only 16 2/3% ownership. The remaining 83 1/3% is owned by the Hawaiian families listed on the document, and they have not been properly recognized since 1914.

The enclosed documents includes Liber 17033 pages 56-64 which assigns Specific Power of Attorney for the deed to Edward R. Kaiwi.

A copy of CHAPTER XIV, AN ACT, signed into law by KAMEHAMEHA R. on 29 July, 1872 is enclosed showing "Section 2A. No person shall be allowed to take the water or any portion of the water which has been awarded, or which may hereafter be awarded to any Ahupuaa, Ili, or parcel of land, except during the time provided in the award of water for such Ahupuaa, Ili, or parcel of land."

Recorded in 1859 is a deed showing conveyance of the interests of Nakoa, et al to Wm H Rice for property in Punaluu, Oahu, Hawaii.

Rights to the land may have been transferable at the time, but we believe it not so for the water. The Oahu water courses began with this Document of 1859, however all of the interests in that property were not transferred.

On September 9, 1859 Palapala Sila Nui, Helu 2629 shows the conveyance of 57 acres in Kuhiwa, Kapia,& Manalawe; Koolau, Maui to Kaai and four others from Kamehameha IV.

Sept. 7th, 1876

Messrs Castle & Cooke
Agents Haiku Sugar Co.
&c, &c, Honolulu -
Gentlemen.

I am directed by His Excellency the Minister of the Interior to say in reply to your application of the 21st August last for certain water privileges,- that the Government will grant to the Haiku Suga Co., Alexander & Baldwin, James M. Alexander, The Grove Ranch Plantation and Thomas Hobron, and their respective and several successors heirs and assigns the license to take water from the Streams named in the application and to Carry the same over all Govt. lands intervening between the said Streams and the remotest of the lands to which it is now desired to carry said water for the period of twenty (20) years from date of acceptance at the rate of One Hundred Dollars ($100) pr Annum, upon condition: - 1st That a sufficient ditch, canal or other waterway shall at once be commenced and finished in a reasonable time.

2nd That this grant shall in no way interfere with the rights of tenants upon said Government Streams or lands.

3rd Nor shall it in any way affect the right of the Government to grant to any person or persons the right to take water (not to interfere with the water herein granted) from the same or other streams to be carried over the same land or lands for any purpose whatsoever, and it need be through the ditch or canal to be constructed by these grantees, provided however that dureing the said twenty years the supply of water, a right to take which is herein granted, shall not be diminished by act of the Government.

4th That at any time during the said period the Government may purchase the said ditch canal or other water way,* and in case of said purchase will continue to furnish water to these grantees and their respective and several successors, heirs and assigns at a just and reasonable rate not to exceed that paid by other parties taking water from such ditch or water way.

I am directed to say further that as early as possible a proper instrument will be drawn embodying the foregoing conditions and executed by His Excellency in favor of the above mentioned parties.

I have the honor to be
Your Obdt. Servt.
Chas. T. Gulick
Chf. Clk.

* for payment of the actual cost thereof only.

Honolulu Aug 21, 1876

To His Excellency
W.L. Moehonua
Minister of the Interior

Sir- The undersigned agents for the following parties engaged in the cultivation of the Sugar Cane, and manufacture of Sugar, to wit, The Haiku Sugar Co., Alexander & Baldwin & James M. Alexander, in the districts of Haiku & Hamakuapoko, island of Maui, be most respectfully to apply to His Majesty's Government for permission to take water from the following streams in the district of Hamakua loa, running over lands owned by the government, to wit, Nailiilipaele, Kailua, Hoalua, Huelo, Holawa & Honopu, for irrigating two or three thousand acres in the said districts of Haiku and Hamakuapoko, and for other purposes, the said Water to be conducted from the said Streams to the said lands through a canal or ditch to be dug or built at the expense of the said grantees.

And the said applications beg to represent that the said Streams of Water now flow through a very broken country, mostly incapable of cultivation, watered by abundant rains and are lost in the sea. The applicants do not wish to interfere with any water rights, if there be any, located between the points at which they propose to take the water now applied for and the sea, but believe the said purposed ditch will be of the public benefit which every prosperous enterprise is in any country and may hereafter be so enlarged as to greatly promote the public prosperity.

For any detailed information we beg to refer you to Saml T. Alexander Esq. who is at present in town & will be happy to give you any information upon this subject in his power

We beg to remain
Your Excellency's
Obedient Servts
Castle & Cooke
Agents &c

P.S. I beg to add to the above, included in those who will assist in the expense of this trial ditch, which if a success will be of great value as to the practicability of such enterprises for the development of the resources of the country.

Capt Thomas H. Hobron
and Grove Ranch
I am Very Respectfully
Your Excellency's
Obedient Servant
Saml N Castle

On January 22, 1878, a note from the assistant clerk P. Jones of the Minister of Interior to W. L. Moehonua, Governor of Maui, shows that Kamili and Twelve others with him had filed a receipt for $31.43 as the balance due on the purchase price for 36.68 acres of land at Honolulu Nui, Nahiku, Koolau, Maui. Royal Patent No. 3590 was signed on August 22, 1878 by King Kalakaua conveying title to those 36.68 acres in Fee Simple to Nahiku.

In liber 54 on pages 10 & 11, Paakuku conveys to Kamakakoa 56 64/100 acres in Nahiku and Makakoa conveys to Kapu & others 56 64/100 acres in Nahiku on January 22, 1878.

TRANSLATION;

Keanae, Koolau, Sep. 12th, 1881.

To the Hon. H. A. P. CARTER
and the Hon. J. S. WALKER,
Commissioners of Crown Lands,
Love to you both.

We, the Committee, whose names are below, request of your kindness, not to dispose any of the water-rights of the Crown Lands, that is from Honomanu, Keanae, Wailua, to the millionaire, (Claus Spreckles,) of Kamaomao. Because, if any of the water-rights of the above described Crown Lands are disposed of, then, the King's subjects, living on said lands, will be in trouble. Because, what the millionaire has done with the waters of other lands is well known, and on account of this trouble which is known, that is why we make this application. It is not proper to come for the water of the lands above described.

In testimony of this, we write our names:

J.W. KEHUKU,
K. MAKAENA,
J.K. HUEU,
S. KAMAKAHIKI
K.E. MAIAILUA,
D.W. NAPIHAA,
M. KALEBA,
B.B. KALILIMOKU,
KAMANELE,
J.S. LUND,
J. KOLUHIAWA,
KELII,
J.B. KAAKUAMOKU.

Translated by E.H. Hart.

On July 25, 1887, Kamili conveyed his interest in property at Kuhina, Koolau, Maui to J. Kaiwi. This interest came from his father, Kaai. A copy of the document is attached.

In 1897, Hawaii had treaties and conventions with Belgium, Bremen, Denmark, France, German Empire, Great Britain, Hamburg, Hong Kong, Italy, Japan, Netherlands, New South Wales, Portugal, Russia, Samoa, Spain, Swiss Confederation, Sweden and Norway, Tahiti, and the United States.... Indeed, Hawaii had entered into at least five treaties or conventions with the United States. (Treaty of Commerce, December 24, 1826; Treaty of Friendship, Commerce and Navigation, August 24, 1850; Rights of Neutrals at Sea, March 26, 1855; Treaty of Commercial Reciprocity, November 9, 1887, (Treaties and Other International Agreements of the United States of America, V.8.))

Great Britain and France joined in a Declaration recognizing its independence and pledging never to take possesion of Hawaii. (Senate Ex. Doc., 52 Cong., 2 Sess., No. 57 p. 13) When the United States was invited to join in this declaration, J. C. Calhoun, United States Secretary of State replied that the President adhered completely to the spirit of disinterestedness and self-denial which breathed in that declaration.

The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may be safely asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and navel representatives.

But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen' Government.

But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the provisional government from the steps of the Government building.

And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Miniter Stevens' recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the sole purpose of submitting her case to the enlightened justice of the United States.

The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but a disgrace. (See Cleveland's address, Supra.)

Cleveland refused to forward the treaty to the Senate as long as he remained President. Liliuokalani was advised of the President's desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January, only if such restoration could be effected upon terms providing for clemency as well as justice to all parties. In short, the past should be buried and the restored government should reassume its authority as if its continuity had not been interrupted. (Gillis, The Hawaiian Incident p. 87-88) The Queen, first protesting that such a promise from her would constitute an unconstitutional act and was therefore beyond her constitutional powers to grant, later acceded to the demands for general amnesty upon the return of the powers of government.

Honolulu, H.I.
March 7th, 1889.

Hon. Chas. R. Bishop.
Pres. Board of Education,
&c &c &c.

Dear Sir,

The East Maui Stock Company holds the lease for the School land called Makawao, and has an application for use of water on it for piping to the Female Seminary and for the Haleakala Ranch Company. Under our lease we suppose that application must be made to the Board of Education for permission to lease or sell any part of the water rights of the said land. This being the case, we respectfully make application for a permit to dispose of the water as above set forth.

Very truly yours,
C. Brewer & Company,
Per. J.O. Carter (sgd.), Secty
Agents East Maui Stock Co.

On November 23, 1891, I. Kalama conveyed his interest in property at Honolulu Nui, Nahiku, Koolau, Maui to J. Kaiwi. This conveyance is recorded in liber 133 on page 461.

January 16, 1893, over 160 American marines landed in peaceful Honolulu armed with a Gatling gun, Howitzer cannons, double cartridge belts filled with ammunition, carbines and other instruments of war. The message sent to the United States commander by Hawaii's Queen protesting such a landing as a breach of treaty and international law was simply ignored. The troops marched along the streets of Honolulu, rifles facing Iolani palace, the seat of the symbol of Hawaii's sovereignty.

The following day, resident conspirators numbering 18, mostly Americans, sneaked to a government building a few yards from where the American troops had purposely lodged the night before. There, an American lawyer, Henry Cooper, who had been a resident of Hawaii for less than a year proclaimed that he and seventeen others were now the government of Hawaii. Calling themselves the "provisional government" and selecting Sanford Dole president, they were to exist for the explicit purpose of annexing Hawaii to the United States.

Before the full declaration had been read, the United States marines marched into the building to protect and support them. American Minister Plenipotentiary and commander of all United States forces in Hawaii, John L. Stevens, gave the "provisional government" immediate recognition as the government of Hawaii. He then joined in their demand that the Queen surrender under threat of war with the United States. (see President Cleveland's address to the Congress of the United States on December 18, 1893. Executive Doc. no. 47, 53rd Congress, 2nd Session, House of Representatives.)

A translation and attached document copies show J. Kaiwi entered an agreement to lease a one share interest in the Ahupuaa of Ulaino, Koolau, Maui to C. Bolte, Trustee, of Honolulu, Oahu. The lease is for the period from June 1, 1899 to June 1, 1914.

On June 13, 1899, Kawahineai leased his interest in property under Grant 2474 at Puumailo, Nahiku to the Nahiku Sugar Company. On June 14, 1899, J. Kaiwi, Jr. leased his interest in property under Grant 2629 at Kuhiwa, Nahiku to the Nahiku Sugar Company. These two documents are recorded in liber 206 on pages 457-459.

In liber 558 on page 50, Solomon Kapepa and wife convey to Henry K. Kaiwi one acre of Grant 3257 in Honolulu Nui on May 17, 1920.

In the matter of the Estate of John Kaiwi aka Joseph Kaiwi, Probate No. 2253in the Second Circuit Court of the Territory of Hawaii, John A. Medeiros of Hana, Maui, was appointed administrator of the estate of John Kaiwi by Judge D.H. Case on April 3, 1930. In liber 1564 on page 233-235 a deed of exchange was executed between East Maui Irrigation Company and Henry K. Kaiwi for the one acre property acquired from Solomon Kapepa, a portion of Grant 3257, in Honolulu Nui, Nahiku, Koolau, Maui. This document was not signed by Henry K. Kaiwi as is attested to by Notary Public John A. Medeiros. A sample of Henry K. Kaiwi's signature as it appears on the Specific Power of Attorney document is copied adjacent to the last page of the deed showing that the signature on the deed is definitely not the same.

GOVERNMENT LANDS LEASED TO CORPORATIONS

Name	Area	Date of Lease	Date of Expiration
Kipahulu Sugar Co.	1,500.00 Acres	Mar.6,1895	Mar.6,1915
" "	155.93 "	Dec.20,1898	Dec.20,1919
	1,655.93 Acres		
Haleakala Ranch Co.	1,075.00 Acres	Jun.9,1905	Sep.21,1926
Henry Waterhouse Tr. Co., Ltd. W.R.	640.00 Acres	Sep.20,1902	Sep.20,1922
American Sugar Co., Ltd.	20,457.00 Acres	Feb.10,1888	Jan.1,1918
"	3,736.00 "	Apr.26,1904	Jan.1,1918
"	4,884.00 "	May 14,1898	May 14,1919
	28,077.00 Acres		
Kaneohe Ranch Co., Ltd.	342.00 Acres	Apr.14,1893	May 1,1913
	801.60 "	Oct.15,1893	Oct.15,1913
	350.00 "	Aug.31,1898	July 1,1920
	525.00 "	June 13,1903	June13,1913
	2,018.60 Acres		
Waimanalo Sugar Co.	6,835.00 Acres	Nov.22,1890	Nov.22,1920
Leilehua Ranch Co.	1,034.00 Acres	Jan.14,1882	Jan.14,1912
"	125.00 "	"	"
" U.S.M.R.	14,678.00 "	"	"
"	3,460.00 "	"	Feb.28,1912
	19,297.00 Acres		
Apokaa Sugar Co.	3.47 Acres	Jan.9,1899	Jan.9,1920
"	2.63 "	Sep.30,1907	Jan.5,1913
	6.10 Acres		
Olowalu Plant. Co.	7,940.00 Acres	Jan.1,1908	Jan.1,1929

Name	Area	Date of Lease	Date of Expiration
Wailuku Sugar Co.	430.00 Acres	July 1,1863	July 1,1913
"	75.00 "	Apr.26,1904	May 1,1909
"	15.50 "	Mar.29,1897	Apr.1,1918
"	375.00 "	Mar.21,1898	June 1,1919
"	158.00 "	June 1,1908	June 1,1913
	1,053.50 Acres		
Pioneer Mill Co.	3,000.00 Acres	Apr. 1,1890	Apr.1,1912
"	2,807.00 "	"	Apr.1,1913
"	57.00 "	July 22,1907	July 22,1911
	5,864.00 Acres		
Hawaiian Commercial & Sugar Co., W.R.	4,100.00 Acres	July 8,1878	July 8,1908
Hawaiian Commercial & Sugar Co.	3,260.00 "	Nov. 17,1878	July 1,1908
	7,360.00 Acres		
Haiku Sugar Co. W.R.	4,000.00 Acres	Sep. 30,1893	Sep.30,1916
Nahiku Sugar Co. W.R.	[illegible],100.00 Acres	Aug. [illegible]	Aug.2,1928
Kaeleku Sugar Co.	971.00 Acres	Aug.17,1893	Aug.17,1908
"	600.00 "	Dec. 5,1893	Dec.5,1913
" W.R.	7,500.00 "	May 14,1896	May 1,1917
" "	380.00 "	Apr.14,1906	Apr.14,1927
"	1,115.00 "	June 4,1898	May 2,1920
	10,566.00 Acres		

We request that an Agreement between the State of Hawaii and the "water" families be drafted immediately upon receipt of this letter and enclosed copies of documents. All licenses issued by the State of Hawaii for water in Huelo, Honomanu, Keanae, and Nahiku be revoked because violations of lease exists between the government and East Maui Irrigation Company.
(Liber 1435 pg. 1 to 271, 18 March, 1938)

We request that all payments outstanding and due to the "water" families as of June 1, 1914 to date, be applied to any bad debts due the State of Hawaii for land and other taxes for any properties presently occupied by the State of Hawaii and East Maui Irrigation Company.

All monies due the "water" families be translated into real property and registered to the heirs of the original Wailuku Water Course Agreement. (Bureau of Conveyances, book 17, page 1 to 478)

Ua mau ke ea o ka 'aina i ka pono
Me kealoha pumehana,

Edward R. Kaiwi

Edward R. Kaiwi, Advisor

William H. Chang

William H. Chang, President

Senator MATSUNAGA. All the documents you have submitted will be made a part of the record. And you may play the flute, but it won't be part of the record.

Mr. KAIWI. I wanted to say something to you, Sparky Matsunaga and Danny Akaka. I'm a Vietnam veteran. I'm a disabled veteran. I've been writing to you for years and telling you about the problems of our people. So I have this poem; I'm going to read it to you, and it's coming from my heart:

> Oh flower of great beauty, oh America, the beautiful. I have been longing for your fragrance, I have been longing for the beautiful things from my country. Must I roam the Islands for you, must I go to Kahoolawe for you. Oh flower of great beauty, oh America, the beautiful.
>
> For one must live and one must die, for eternity is I. For one must be you, and one must be me. Long have we waited to see our land in love with us. Only the sea has not been touched with the anger of your ways. You have been truth in the way but have lost the feeling; for one is the tree and the earth, take not the water nor the sun. For the love being is giving, and what does the giver benefit, if the receiver does not receive the gift. I'm proud to be a Hawaiian, but I was proud when I was an American and believed in the flag, and all the things of my country. And I come to you for the last time—free us from this ignorance you guys have put us in.
>
> I can't take no more, because I believe so much in the flag behind you. I lost mine in Vietnam. I'm a hundred percent disabled. I still fighting. In Vietnam I belonged to the Walking Dead Battalion. Sixty-seven of us are left from Hamburger Hill, Vietnam. I'm the last of the sixty-seven marines that made Marine Corps history, to come back to tell you that it's fine for the United States government to go back to the Constitution and the Bill of Rights, the original Constitution of the United States, which you and everybody else have taught us. But now it's not for real. You're not keeping your word. You take this back to the President and tell him, we love him, we love everybody, but now it's time for everybody to do their part. And as a Hawaiian, I'm doing my part, and I'm thankful for you, Spark, and all the things you've been helping me—and Akaka, for sending the Purple Heart and the flag to raise on Kahoolawe. Because I believe in truth. Love is the root of all that is good and true. That was from my grandfather, the Reverend James Tekela, first minister of Kawaiahao Church.

And thank you for letting me come up here and speak to you. Aloha.

Senator MATSUNAGA. Mahalo, Ed. They were moving words.

Our next witness would be Tisa Moana Kalili. Tisa's not here.

Then we'll go to John Bose. John, are you here?

STATEMENT OF JOHN BOSE

Mr. BOSE. Senator Matsunaga, Representative Akaka.

And I thank you Hawaiians for letting a haole say a few words today.

My name is John Bose. I've resided in Hawaii since 1967. Ten years before that I studied American history as a graduate student at the University of Miami, and I think that volume I of this report maybe'd get a D-minus in a not very good history course, if it were looked at, at all critically.

The Western World has had a way of adding insult to every injury it has bestowed upon the Hawaiians. After the sandalwood was gone and the white traders had been enriched, the Hawaiians—whose land and health had been ravaged—found themselves in debt to the devious, greedy traders. After depleting one resource, the Hawaiians had to give up land and water to make up the difference.

About 27 years after the injury of the overthrow of the Hawaiian kingdom, the few surviving Hawaiians had new insults heaped on them under the guise of "benevolent rehabilitation." This was the deceitful treachery called the Hawaiian Homes Commission Act. This amendment to the Organic Act did three things:

One, it stopped traditional homesteading in Hawaii, protecting the better land for the plantations.

Two, it lifted the 1,000-acre limit on corporate ownership of land, allowing the illegal multiple holdings of plantations to be consolidated.

And three, it set aside some worthless land and set up an unworkable system for rehabilitating the Hawaiians.

History plainly shows that the plantations did indeed benefit, while the Hawaiians are still waiting to be returned to the land. Today, we are still rubbing salt into the injuries of the past by seeking to falsify the historical record.

As an American citizen, I find this whole business disgusting. It demeans our Government and all the people that Government represents, by implying that our morality is so low and our ignorance so abysmal that we could swallow the majority report of the Native Hawaiians Study Commission.

Thank God, we had three commissioners with the honesty, courage, and intelligence to publish their dissent.

And thank you, Senator Matsunaga and the pro tempore members of your committee for hearing the people on this important matter.

Senator MATSUNAGA. Thank you very much.

I wish that the six members of the commission had the courage to admit that their government was wrong, as you have. And I thank you for your testimony.

Our next witness is Inez Ashdown. Inez?

Inez is not here.

Then, I shall call upon out next witness, Mikahala Among.

A VOICE. She just stepped out of the room to make other arrangements; she'll be back.

Senator MATSUNAGA. OK.

And what about Kelii Tau'a.

We'll be happy to hear from you, Kelii.

STATEMENT OF KELII TAU'A

Mr. TAU'A. I'd like to say aloha to you and to Repesentative Akaka.

I, as a native Hawaiian, stand before you to tell you that I did not come here to speak, but just to observe. And as I was moved by a beautiful, warm aloha spirit, I felt it was part of my duty as a native Hawaiian to share some of my thoughts of what has happened to me, so that maybe others might be able to learn and, especially from the committee and hopefully the President.

As I was trying to juggle some of my thoughts on paper, Mr. Ed Kaiwi, who has just beautifully testified, shared with me, and I quote, "Eh, Hawaiian, you don't have to write your thoughts. It's what here that counts." And it couldn't help but touch me, because ever since I was born into a family, up in Kula, a large family of 14, being the last and getting all the hand-me-downs, I made a personal goal to strive and learn to become a better citizen of Hawaii and the United States.

So all these past years, I thought that by learning, I might contribute to a better Hawaii and a better United States and a better American citizen. I've discovered, however, that even though you make personal commitments and achievements in your life, that there is still a system that we, as Hawaiians, have to stand up for in order to be counted—in order to be able to continue to exist on the land that we love. And we only can achieve this by participating in such activities as is happening here today. And for you Representatives and Senators to listen to our concerns about what's happening to us—a lost nation upon their own land.

I am presently working with the Educational Opportunities Center, which allows me to take a look at what is happening to our educational system; and I'd like to address that.

I have been very fortunate to work in the educational system from elementary all the way up to the university level. And also to create institutions that are privately run by myself. And I have recognized that the Hawaiians that exist today are still going through a cultural and psychological problem brought about to us not only through the overthrow, but through the impact of Western influences. And it only can be amended by funds that hopefully we can appeal to organizations such as the Government of the United States, to contribute to the education and the welfare of the Hawaiian people.

I hope that this short testimony of my heart might be a start of those who are in positions to take a considerable and careful look at the demise of the nation of Hawaii Nei, and be able to contribute to a start, a beginning, of a future for the young ones of Hawaii.

Thank you very much. Mahalo.

Senator **Matsunaga**. Mahalo, Kelii.

Our next witness is Leslie Kuloloio. Is Leslie here?

Then has Mikahala Among returned? Mikahala, we'd be happy to hear from you now. Oh, wait a minute, I didn't notice—Leslie. Leslie Kuloloio, please.

STATEMENT OF LESLIE A. KULOLOIO

Mr. **Kuloloio**. Kihamea, members of this committee, I would like to ask all kupuna and the Members in this Chamber to kui una, to stand up so we can stretch our bodies, so you can listen good to me on my speech. Kui una. Take a stretch.

You may be seated.

Mr. Chairman, Senator Spark Matsunaga, Members of the U.S. Senate Committee on the Energy and Natural Resources, my name is Leslie A. Kuloloio. I'm a native, born on Maui, and reside in Pauwela, Maui, County of Maui, one of the beautiful places here, throughout the State of Hawaii. May I take this time to say aloha and congratulate our three Hawaiian Commissioners for the minority report classed as volume II, and give them my full support in the dissatisfaction with the recommendations of the erroneous six other members with a thumbs-down applause for their efforts.

I also would like to congratulate the trustees of the Office of Hawaiian Affairs and those who are present here—Joe Kealoha and Garth Kealoha—and others who are present, for their leadership and role in the efforts taken toward the issues and concerns of the native Hawaiians, and the native Me, in regards to the overthrow of the Hawaiian monarchy and the native claims long overdue.

I support Congressman Dan Akaka in that the majority report lacks sound historical accuracy. I also agree with Congressman Cec Heftel that once and for all we must establish who was responsible for what actions. I, the native Me, find the United States guilty and responsible for the overthrow of the monarchy, and demand an apology by the present administration to acknowledge it.

Personally, I feel that I have been overthrown by the actions of the past, and unable to accept any question or reasonable doubt in regards to the overthrow of the monarchy.

I also support with the following members of the Kaulana Na Pua Institute in conducting and preparing source research focusing on certain other aspects of Hawaiian claims.

I ask the members of this committee to reject the majority report by the erroneous six, and now may I also demand another apology from those six erroneous mainlanders. They took it upon themselves to take mindless action, by making a mindless decision, based on a mindless report.

Let's give me a big hand for saying that, kupuna.

I would be a hypocrite to particpate during the month of May 1984, to celebrate statehood in Hawaii as a native Hawaiian; but will do so as a native American. But still, I love my country, and I also love my ancestors, the Ali'i.

I will continue to teach my children and hopefully their children's children, about the overthow of the Hawaiian monarchy, until the day when the U.S. Government apologize for the mindless overthrow.

Today, I call upon my Ohana, which is "family," on the record, to join me in this testimony with aloha and understanding. Kauaua Ohana, 6,000; Kukahiko Ohana, 2,000; Kekahuna Ohana and Kuloloio Ohana, 3,000. We are the native Hawaiians and those whose children who have been affected by the overthrow of the Hawaiian monarchy in 1893.

Mahalo A Nui Loa—the Native Me, the Hawaiian Me, the Local Me, the American Me.

Thank you.

Senator MATSUNAGA. Thank you very much, Leslie.

You're the first one who kept within the time, even with such moving thoughts. Congratulations. Ms. Among.

STATEMENT OF MIKAHALA AMONG

Ms. AMONG. Ano ai, my name is Mikahala Among, and I am here to lend support to the minority Report of the Native Hawaiian Study Commission.

As a part Hawaiian and hula student, I've learned the depth and beauty of our Hawaiian culture as it is passed on by our kupuna and my kumu hula. I, in turn, try to share with my daughter and children the hula and the meaning behind it.

Some of these hulas are dedicated to different Ali'i, including Queen Liliuokalani. It is with great reverence that we dance for her.

At the same time, we know the circumstances in which she was overthrown, and feel for her. The United States has a definite role in the overthrow of the Hawaiian monarchy, and therefore is responsible for making reparations. Over the years I have seen a lot of work by family members, community people—Hawaiian and non-Hawaiian—and kupuna that have now passed. The hard work—research, hearings, meetings—have all been to bring about the justice that is due to Hawaiian people.

This is the justice that Kina'u Kamali'i and the Commission reports filing the minority report represent. I only hope that the rest of Congress will recognize what is rightfully due.

Mahalo for your kindness.

Senator MATSUNAGA. Thank you very much, Mikahala, and certainly good to see the young ones taking up the cudgel which the elderly Hawaiians have carried for so long.

Let's see, earlier I had called upon Inez Ashdown. She's not here still. And Tisa Moana Kalili—not here.

If not, we'll call upon, presumably, the last witness for today, one who has been with us for 3 days now. She testified in Honolulu and in Kona, and she says she has more testimony for today and would like to testify. I have agreed to have her testify, because she has something new to tell the committee.

I would like to call upon one who appears to be part of the family now, Velma Papahileialoha Kekipi.

STATEMENT OF VELMA PAPAHILEIALOHA KEKIPI

Ms. KEKIPI. Senator Matsunaga, U.S. Representative Akaka, Kina'u, Kupuna, Ohana, friends.

Aloha Awinala Ia Oukou.

Mahalo Nui Loa for participating in these proceedings.

Velma Papahileialoha Kekipi Ka'u Inoa. I am a native Hawaiian of 50 percent Sensei, third generation Kepanee, and the other 50 percent is of aboriginal descent. I am happy I am an American citizen, and I am proud I am Hawaiian.

In the release from Senator Matsunaga's office dated February 24, 1984, it stated, and I quote:

> Noting that there were sharp differences of opinion among the members of the Native Hawaiians Study Commission, with respect to the role of the United States 1893 overthrow of the Monarchy, Matsunaga said that the Senate Committee will address this issue during its hearings and further deliberations.

I would like to share some of my observations and mana'o i'o regarding the political climate this Native Hawaiians Study Commission has endured, and the political, economic and national pride here and elsewhere that triggered off the 1893 overthrow of the monarchy.

First of all, I would like to joggle your memory banks. The Native Hawaiians Study Commission goes back to President Carter's administration. On the very last day of his term, he appointed nine members to this Commission. When I heard of his action, I said to myself, "Oh no, here we go again. It's going to be another political football." And sure enough, when President Reagan took office, one of the first things he did was to cancel the Commission. Later, he reestablished the Commission, and announced his selection, who were all Republicans.

This is a classic example of American politics. The issue is used to save face, score points, and win votes. With the deficit budget in such a critical situation, how could the Native Hawaiians Study Commission come out with any honest and legitimate recommendations if they advocated any further claims to the U.S. Treasury?

Now, for the politics, economics, and national pride experienced here and elsewhere that triggered off the 1893 overthrow of the monarchy. I would like to recommend that you refer to the Blount report done during those times. Col. James Blount was commissioned by President Grover Cleveland to investigate the allegations of our Ali'i. The Blount report confirms the role of the United States in the 1893 overthrow of the monarchy. On December 18, 1893, President Cleveland went before a joint session of Congress and admitted that a grave injustice was caused to a sister nation. It is all there in the annals of the Congressional Record.

The question is not if the United States had a role in the overthrow. The question is, how do you work things out amicably and have the United States save face?

During the years following 1893, the process of trying to undo something that was done was very difficult for Washington, DC to negotiate with the dethroned monarch and the revolutionists over 5,000 miles away.

First of all, when they asked our Ali'i what she planned to do with the American citizens who implemented the overthrow, our Ali'i answered that they would be tried for treason. Now, to have American citizens tried for treason on foreign soil, and found guilty, is very embarrassing, and it is in conflict with our constitutional guarantee to American citizens of freedom of sppeech and freedom of the pursuit of happiness.

The deliberations took years, until our Ali'i agreed to drop the treason charges, and only ban the leaders of the overthrow from the islands, never to return again. But, by that time, the revolution leaders who had taken over the use of approximately 2.1 million acres of land, had organized the Republic of Hawaii in 1985, declared that English would be the national tongue, refused to restore the monarchy or return anything that they had taken over the use of.

I would like to suggest the motive from which these actions took place. On July 5, 1844, the United States signed a commerce treaty with China. Now, how were they going to get to China? They needed a land base here in Hawaii from which to operate—for that matter, to the whole Pacific eastern area. Our land system, at that time, was not based on an ownership like that of the Western sense, but on usage managed by our Ali'i for the benefit of all.

I could go into more detail, but because time restraints are on me, I would like to close quoting our Ali'i, King David Kalakaua, brother of the Ali'i Queen Liliuokalani, who was overthrown. He was the first head of any government to travel around the world. This is an excerpt from his farewell speech, which I feel is particularly appropriate for these times.

Taken from the Hawaiian Kingdom, 1874 to 1893, written by Ralph Kuykendall, page 228.

> Around this table are gathered people from many nations. In common with my predecessors, I desire the best welfare of all who gather under our flag and in my dominions, and I believe that you who come from other lands, sympathize with me in my desire to protect my native Hawaiian people and strengthen my nation.
>
> To do this, we must work in harmony under the Constitution and laws, and recognize cheerfully the fact that Hawaii, as one of the family of nations, must be governed in accordance with the ideas which control constitutional governments.
>
> We have many difficult questions to settle arising out of our peculiar situation. They demand the best statesmanship and patient investigation. I am in hopes, while absent, to gather some ideas which shall aid in their solution.
>
> If there have been mistakes in the past, let us profit by the lessons of experience, and with honesty of purpose, let us press on to a future which I trust may be bright with prosperity and hopefulness.

King David Dalakaua, January 14, 1981, Iolani Place, after 9 p.m. in the evening.

Mahalo Nui Loa.

Ia Oukou A Mau Loa Malama Pono.

Senator MATSUNAGA. Thank you very much.

Unless there are others who wish to testify at this time, I would like to first ask Congressman Akaka if he has any closing statement for this hearing.

Mr. AKAKA. Thank you very much, Mr. Chairman. I want to thank you for making all of these arrangements, Senator, and for giving us this opportunity to refute volume I of this Native Hawaiians Study Commission report.

What I've heard—what we've heard today will be good evidence that will support this refutation of that volume I. I am very impressed with the testimonies we have received and heard today. The quality is of the best, and we can certainly use this in our cause to reverse what has been done.

May I further comment, to clarify some of the questions we have received. There have been some people of Hawaii that have in a critical way mentioned that when the Japanese reparations bill was brought to Congress, it was offered in both the Senate and the House, and it passed. And here we are with our Hawaiian so-called reparations bill; we're still struggling with it.

The difference is that the commissioners who were selected for that Commission were people from around the country who, I would say, would be considered bipartisan. And the thing about their report is that they all agreed unanimously that there was a wrong done to the Japanese, and they should be compensated. As a result of that unanimous report, it was accepted, put into a bill, and passed.

Now for us, our report was adverse; we could not take it and say, "Pass it." And so the three champions of our cause—Kina'u, Rodger and Winona—stood up against it, produced a minority report, and this is what we want to prevail. And so we have an extra wrinkle in this whole thing. And the wrinkle is that we cannot accept the report that was produced by this Commission—volume I—and that we are collecting evidence so that we can refute it. And I want to thank you very much for your part in doing this, and I, for one—and I'm sure the delegation—pledges itself to continue fighting for this cause.

Mahalo.

Senator MATSUNAGA. Thank you very much, and just to correct the record: What Congressman Akaka said was not that the bills were passed, but the bills were introduced in both Houses to implement the recommendations of the Commission on redress to the Japanese-Americans and Aliutes. And the bills are still pending in Congress. But what Congressman Akaka was trying to stress, I'm sure, is that in the light of the adverse report of the majority, it is going to be much tougher in this case than in the case of the bill for the Japanese-Americans. And even in the case of the bill providing for redress to the Japanese-Americans who were interned—that is, put in concentration camps during World War II for no reason other than that they were of Japanese ancestry. Even with that bill, where the unanimous view as expressed by the Commission was to make redress and the United States should apologize for its wrongdoing, we are anticipating truly a difficult time in getting the bill passed. And we are evidencing, for example, the reluctance on the part of chairmen of committees to even hold hearings. And just as in the bill which I introduced 21 years ago to establish a U.S. Academy of Peace, I have just managed to get the bill out of committee. Everybody loves peace—they say, "Oh, yes, we're all for peace." And here my thought was,

> Well, if we're all for peace, then we should train our future leaders, and the future leaders of other countries, in the art of peacemaking. You see, we take the brightest of the high school graduates and send them to military academies to learn the art of warmaking. Well, why shouldn't we take the brightest of our college student graduates and send them to a Peace Academy, to learn the art of peacemaking? Oh, what a great idea.

You'd think everybody would buy such a great idea. But it has taken me 21 years to get that bill out of committee and onto the Senate floor. Now, in the House, I failed completely. And now that the bill is on the floor of the Senate, all it would take for a debate is for the majority leader, Mr. Howard Baker, to schedule it for debate. But because the President of the United States is against my bill, he will not schedule it. You see, we run into such problems.

The first attempt for legislation in the case of the Native Hawaiians Claims Act was, as I pointed out earlier in my opening statement, in 1974. Ten years now. So what we are going to have to do is, as Velma read from a statement by King Kalakaua, if there have been mistakes in the past, let us profit by the lessons of experience. And with honesty of purpose, let us press on to a future which I trust will be bright with prosperity and hopefulness. In other words, Ae Makaala Hako Hoomanaonui—catch me no longer. We're going to have to do that.

And before I pound the gavel, I want to thank all of you for coming to these hearings. As I have stated at past hearings, I wish to join Congressman Akaka in truly commending all of you, because as compared to the types of testimonies we used to get in the past—say, 10, 15 years ago—the testimonies not only from the doctor of philosophy, the Ph.D.'s, but from the laboring class have been top notch. The improvement of the testimony since we first started on this 10 years ago, is truly remarkable. It's almot unbelievable. You see, the people who have testified today, yesterday, and the day before have gone to documents--gone to the library to study, brought forth facts—facts which support their proposition. And this is why we are holding these hearings, that we will have facts to support our proposition that the majority of the Commission was wrong; that minority of three, the Hawaiian commissioners, are right in proposing what they did with their 14 recommendations. And as a native Hawaiian—I say, "native Hawaiian," because I was born here in Hawaii, raised here—and when you speak of the definition, "native Hawaiian," I have many many calabashes, many relatives who are now of the "native Hawaiian" stock, and as a matter of fact, the chairman of the Commission, Kina'u Kamali'i is my calabash, by marriage. And I could name others, but it just shows that Hawaii, the people of Hawaii, are beginning to become one. And we have come to a point where in unity, we cannot fail. We are going to succeed, and recognize the injustice that was done to the native Hawaiian. And we are going to correct that mistake. That's what we're here for.

And is there anyone else whose name I had called earlier, arrived since we started talking? You see, we happened to finish earlier than expected, so since we have a little time, I know she's going to testify in full tomorrow on the Island of Kauai, but you've heard such glowing statements being made about the chairman of the Commission, and I say "glowing statements" because truly, she did one of the most difficult things that any chairman of any commission or any committee can do: that is, go against the majority. She headed the minority and came out with an adverse report—that is, adverse to the majority's report.

Would you care to extend your words of aloha at this point, Kina'u?

Do you want this on the record or off the record?

Ms. KAMALI'I. It doesn't matter, Senator. I just want to thank you very much, personally, again, for coming to Hawaii with this committee and chairing it and giving us the opportunity to speak against volume I of the native Hawaiians Study Commission report. And to thank Congressmen Akaka, Heftel and Senator Inouye for their dedication and their commitment to us, the people of Hawaii, in our striving for justice and honesty and for what is right for we Hawaiians.

I will make my closing statements on Kaua'i. We will have a panel of H. Rodger Betts and Wincona Beamer at that time, and will summarize the testimony in the hearing that we had in Honolulu as well as Kona and today.

But I would like to make one statement—that in refuting volume I, and asking Congress to accept the conclusions and recommendations of volume II will put us on record in Congress that the justice for the Hawaiian people is long overdue. But I also want to go on record to say that this is only the beginning. We have worked for many, many years—10, 15—and for this commission and the members, very hard, daily, for the last 4 years. The "smoking gun," as I have called it in the past, is still to be found, though we have uncovered many, many documents in the National Archives and the Naval Archives and the State Department and through their documents, there is much more to uncover because Congress knows, and the Members of Congress know, so little about Hawaii. You must remember that we are 5,000 miles away. Sometimes that's good. But in this instance, it is not.

After these hearings, we must come together as a people. We must come together and agree on what we can agree on, and honestly disagree with what we cannot agree on. And then sit down and hammer these decisions out. We must come together and decide what we mean by Hawaiian rights, and what are those rights? We must come together and deceide, what is reparations, what is restitution, and what do we mean by restoring these trusts? Reparations, restitution, and restoration of these trusts are important, and must be done. But they must be done with the input of the Hawaiians. These must be our decisions, and we have come a long way.

I have seen, as Senator Matsunaga has stated, the difference in our attitude and the eloquence of our testimony—whether they are written, or orally given, I am proud to be a Hawaiian, and I am proud of how you are proud to be a Hawaiian. We must maintain our pride and our dignity, and don't ever apologize for being a Hawaiian or for your lack of education.

We hopefully will come together later this year or next year—the Kaulana Na Pua will hopefully hold a convention so that we can discuss these issues among each other. So I say to you, and to our Senator, and Congressman, Oni Paa—steadfast.

Mahalo.

Senator MATSUNAGA. Mahalo. Thank you. Thank you ever so much, Kina'u, and with her words, I'll close this meeting and call a recess until Friday, when we will meet in Kauai. But now, a pounding of the gavel merely means that the committee has come to recess; but I have some personal words after the committee gets recessed.

The committee stands in recess, subject to the call of the Chair.

[Whereupon, at 3:30 p.m. the hearing was recessed, to reconvene Friday, April 20, 1984, in Lihue, HI.]

NATIVE HAWAIIANS STUDY COMMISSION

FRIDAY, APRIL 20, 1984

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Lihue, HI.

The committee met, pursuant to notice, at 10:30 a.m., in the county council chambers, Hon. Spark M. Matsunaga, presiding.

Present: Senators Matsunaga and Inouye, and Representative Akaka.

Also present: James P. Beirne, counsel; Becky Barbour and Nora Melnick, staff assistants

OPENING STATEMENT OF HON. SPARK M. MATSUNAGA, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator MATSUNAGA. Thank you very much for your rendition of the oli.

We'll now have the puli by Levi Kapalihua.

Thank you very much, Reverend Kapalihua.

The committee will please come to order. I apologize for the delay. All of us were delayed because of the very serious accident right at the ramp leading to the airport in Honolulu. A truck trailer had hit two cars and scattered right across the highway, blocking the highway, completely. So we missed the earlier plane.

We'll have the expert witnesses at the beginning. They will be limited initially to 8 minutes, and it is necessary for them to summarize and finish up within a minute or so after that. We'd appreciate it, and we may have questions for the experts. If not, we'll submit questions in writing to them for the record.

If any of you have not yet signed up downstairs, we've a witness sign-up table at the foot of the stairs. If you wish to testify and you have not signed up, we'll ask that you please go down and register. If you have any written statement you wish to submit for the record, and you don't wish to testify orally, if you will submit that written statement, that statement will also appear in the record. And if you wish a copy of the hearing record, after it is printed, then if you'll leave your name and address down at the desk, we'll see that you get a copy. You do not need to testify in order to get a copy of the hearing record.

We've been very fortunate in that we have had real experts testify before this committee in the last 3 days. This, as you know, is the last of four hearings to be held throughout the State. Considering what we've been through in the last 12 years, I find that the calibre of testimony has improved tremendously. When we held hearings about 10 years ago, most of the witnesses were primarily trying to express their personal messages. But since then, they have gone to the archives, to the libraries, and they have dug up old documents and that has been a real education for me—and I'm sure for the rest of the panel. I'm happy to have with me on the panel today, as honorary members pro tempore of the Senate Committee on Energy and Natural Resources, the distinguished senior Senator from Hawaii, Senator Daniel K. Inouye, to my right, and the one and only native Hawaiian Member of the Congress, Hon. Daniel K. Akaka, to my left.

Just to set the tone for the hearings, I would like to trace the history of the events leading to this hearing.

It was back in 1974 that the first bill providing for direct compensation to native Hawaiians was introduced in the House of Representatives. I introduced the bill with the cosponsorship of then-Congresswoman Patsy Mink. That bill got nowhere, although hearings were held and the hearings brought out very cogent issues, especially with regard to the overthrow of the monarchy in 1893. The hearings raised the issue of whether or not the United States was responsible for the overthrow of the monarchy of Queen Liliuokalani, and whether, as a consequence, the United States was responsible for the consequences which flowed relative to land ownership and denial of property rights of the native Hawaiians.

Because of these valid questions, the U.S. Senate adopted a different approach. In December 1975, Senator Inouye introduced Senate Joint Resolution 155, which sought congressional acknowledgement of the wrongs done to native Hawaiians. It also called for the establishment of a Hawaiian Native Claims Study Commission with a broad mandate to conduct a comprehensive study of the questions relating to native Hawaiian claims.

Senate Joint Resolution 155 was referred to the Senate Interior Committee, now the Committee on Energy and Natural Resources and, after due consideration, it was favorably reported, late in the 94th Congress.

In 1977, when I took my seat in the Senate, Senator Inouye and I introduced a similar measure, Senate Joint Resolution 4, providing for a study of native Hawaiian claims. Identical legislation, House Joint Resolution 526, was introduced by Congressmen Akaka and Heftel in the House. Our Senate resolution passed the Senate unanimously in October 1977, but, when the House resolution reached the House floor, it was recommitted for further study to the House Interior and Insular Affairs Committee. During the remainder of the 95th Congress, the four members of the Hawaii congressional delegation worked hard to convince Members of the House who opposed the legislation to support it. Finally, just before Congress adjourned in December 1980, a compromise was adopted in the form of an amendment to legislation providing for the establishment of Kalaupapa National Historic Park. The bill, including the amendment providing for a study of native Hawaiian culture, needs, and concerns, was signed into law on December 22, 1980, by President Jimmy Carter, and he appointed a nine-member study commission before leaving office in January 1981.

But then, upon succeeding President Carter, President Reagan immediately dismissed the entire commission and appointed his own commissioners several months later. The study commission held its first meeting in September 1981, and, as required by law, submitted its report, including its findings and recommendations, in June 1983. And under the provisions of Public Law 96-565, the U.S. Senate Committee on Energy and Natural Resources and the U.S. House of Representatives Committee on Interior and Insular Affairs have jurisdiction over the report of the Native Hawaiians Study Commission. It is the responsibility of these two committees to review the report and recommend to Congress what action should be taken with respect to the commission's findings and recommendations.

Now, these hearings which have been held in Hawaii, this being the final one, will constitute the first step in the process which we hope will result in the introduction of appropriate legislation to effectuate the recommendations of the Commission. Unfortunately, however, the majority of the Commissioners came forward with an adverse report. A minority report was filed by three Commissioners from Hawaii: Kina'u Kamali'i, who served as the Commission's chairperson, Rodger Betts and Winona Beamer—they're here today to testify, and you'll hear from them later. The minority report included 14 recommendations over and above those of the majority. And included findings contrary to the majority of the Commissioners.

From what I've heard to date at previous hearings, I'm inclined to agree with the minority that the majority made findings of fact and conclusions which were erroneous and that the minority report is the one which Congress should follow.

It's my hope, as acting chairman of this committee, that by taking the testimony which we've received over the 4 days of hearings throughout the State, that we'll be able to convince the members of the committee, the majority of them, that the minority report is the one which should be adopted; and then to convince the Senate and the House of Representatives—at least the majority of them—that the minority report is what the Congress should adopt.

So, without further ado, now we'll call upon Senator Inouye for whatever opening remarks he may have.

Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator INOUYE. Thank you very much.

As the chairman indicated, the question before the Congress will be very simply: Should the members accept the findings and conclusions of volume I, the majority report, or volume II, the report drafted by Kina'u Kamali'i, I maintain that the findings and conclusions set forth in volume I are not based on fact. No. 2, it's a gross misinterpretation and a gross distortion of the history of Hawaii. Any finding that will conclude that the United States played no role in the overthrow of the legal, sovereign government headed by a legal sovereign, Queen Liliuokalani, is one that would tear away any creditibility for the rest of the report. It places a pall on the credibility of all the other recommendations of volume I.

Third, it is obvious for anyone who reads the findings and conclusions of volume I, that those who drafted the report lacked the necessary sensitivity—sensitivity which I believe is required to fully understand the complex culture, the unique culture, and the problems of the Hawaiian people. Therefore, I'm going to do my best to convince my colleagues in Congress that we should reject the findings and conclusions of volume I and accept the findings and conclusions of volume II.

At this juncture, I think, I would like to recognize the courageous effort made by the chairperson of this Commission, Kina'u Kamali'i. She deserves great commendation from the people of Hawaii. It was not an easy thing to do, to speak against her colleagues. It was a report that is filled with clarity. I think all of us can understand what the history of Hawaii was at that time. And so as to proceed on this, this will someday vindicate the findings of Kina'u. She did a good job.

Thank you very much.

Senator **Matsunaga**. Thank you. Thank you, Senator Inouye.

And now, we'd be happy to hear from Congressman Akaka.

STATEMENT OF HON. DANIEL K. AKAKA, A U.S. REPRESENTATIVE FROM THE STATE OF HAWAII

Mr. **Akaka**. Thank you, Mr. Chairman.

I'm proud to be representing you in the U.S. Congress. I'm proud to have been included in this committee to hear your testimony. I'm also proud to play a role in trying to bring about justice for the people of Hawaii.

I want to say that I associate myself with the remarks of both Senator Matsunaga and Senator Inouye, in their praise for Kina'u, H. Rodger Betts, and Winona Beamer, for the courage in taking a position in refuting volume I. There is no doubt that in the past few days on Oahu, the Big Island, Maui and now Kauai, the testimonies have indicated unanimously that the people of Hawaii from whom we have heard believe in the findings of volume II, and refute the findings of volume I.

I really appreciate your presence here, your show of interest, your commitment to the cause. I want to tell you that I, too, am committed to the cause, as is the entire delegation.

I would like to say a few words concerning timing in the Congress. We will do all that we can to move the kind of legislation that would help the people of Hawaii through Congress. When I say, "timing," I think you realize what I am talking about. We do not want to propose any bills that will lose. Hence we want to propose bills at a time when we know that we have a chance to pass them. This is the kind of consideration that we have to acknowledge in the whole process.

Thank you very much for this opportunity to make these remarks.

Senator **Matsunaga**. Thank you very much, Congressman Akaka. Reference has been made to volume I and volume II. Well, this is volume I. This is the report of the majority of six of the members of the nine-member commission. And this is volume II.

It's about—it's less than one-third of volume I. But I think it carries more weight. We think so. We all think so.

Our first witness is the Honorable Tony Kunimura, mayor of the county of Kauai. Is the mayor here?

The mayor is not here. He was down at the airport, I think. We'd like to give him the distinction, but if he's not here, we'll proceed then to the next witness, the Honorable Raymond Duvauchelle, chairman of the County Council of Kauai. We would be happy to hear from you.

STATEMENT OF RAYMOND DUVAUCHELLE, CHAIRMAN, COUNTY COUNCIL OF KAUAI

Mr. **Duvauchelle.** Honorable Senator Matsunaga, and members of the U.S. Senate Committee on Energy and Natural Resources, my name is Raymond Duvaucelle, chairman of the Council of the County of Kauai. I would like to thank you for the opportunity to testify on behalf of the Kauai County Council about our position on the Report of the Native Hawaiians Study Commission.

The Kauai County Council on April 19, 1984, adopted the following resolution which I would like to read into the record and relay to this U.S. Senate committee:

A Resolution Respectfully Urging the United States Senate Committee on Energy and Natural Resources and the Committee on Interior and Insular Affairs of the United States House to Formally Reject Enumerated Sections of the Final Report of the Native Hawaiians Study Commission, Volume I.

Whereas, The Council of the County of Kauai has a deep and abiding commitment to the enhancement and protection of the rights and interests of all its citizens; and

Whereas, This commitment can, and appropriately should extend to an examination of other governmental documents and studies which impact on the well-being of our community and to their needs; and

Whereas, The Final Report, dated June 23, 1983 of the Native Hawaiians Study Commission, a Congressionally-mandated inquiry (P.L. 96-565, "Title III") to "study the culture, needs and concerns of Native Hawaiians" to provide guidance on possible federal responses in identified areas affecting the right and interests of our citizens; and

Whereas, Volume I of this Final Report contains many errors and inaccuracies which are specifically reflected in Volume II; and

Whereas, Unless these errors and inaccuracies are refuted and formally rejected, it will do harm and injustice to the people of the State of Hawaii; and

Whereas, Volume II offered specific point by point refutation in the following areas:

One, Approach and Methodology, Pages 1-8;

Two, Conclusions and Recommendations, Pages 21-32;

Three, Ancient History to Reciprocity, Pages 147-172;

Four, Land Laws and Land Relationships, Pages 251-264;

Five, Diplomatic and Congressional History: From Monarchy to Statehood, Pages 265-332;

Six, Existing Law, Native Hawaiians, and Compensation, Pages 333-370; and

Seven, Review of Hawaiian Homes Commission Programs, Pages 371-418.

Whereas, The Council of the County of Kauai shares the concerns araised in Volume II of this Report and notes that Volume I contains a fundamental misinterpretation of the history of Hawaii, misapplies American Indian Law to the Native Hawaiian experience, forces legal analyses which jeopardize the whole body of claims and settlement precedents and thereby denies justice to the Hawaiian people; and

Whereas, Such errors and their use as the basis for findings, conclusions, and recommendations to the Congress of the United States of America must not be permitted to stand unchallenged and uncorrected in national records and as the source for possible future determinations of fact or action by the national government, now, therefore, Be it resolved by the Council of the County of Kauai, State of Hawaii, That it respectfully urges the United States Senate Committee on Energy and Natural Resources and the Committee on Interior and Insular Affairs of the United States House of Representatives to formally reject those portions of the Final Report of the Native Hawaiians Study Commission, Volume I, enumerated in the body of said volume, including the entirety of the conclusions and recommendations included in said volume.

Be if further resolved, That certified copies of this Resolution be transmitted to Senator James McClure, Chairperson of the Senate Committee on Energy and Natural Resources, Congressman Morris K. Udall, Chairperson of the House Committee on Interior and Insular Affairs; Senators Spark M. Matsunaga and Daniel K. Inouye; Congressmen Cecil Heftel and Daniel Akaka; Native Hawaiian Study Commission Chairperson Kina'u Boyd Kamali'i; and Office of Hawaiian Affairs Board of Trustees Chairperson Joseph Kealoha.

We hereby certify that Resolution No. 159 was adopted by the County of Kauai, Lihue, Kauai, on April 19, 1984.

Again, I want to thank you for allowing me to address your meeting on behalf of the Kauai County Council. I sincerely request that you consider the concern and position of the county council has taken, as reflected in the resolution.

It should be remembered that we as a nation are trying to achieve justice for the indigenous people of native Hawaiians.

Thank you very much.

Senator MATSUNAGA. Thank you very much, Chairman Duvauchelle.

I assume it was unanimous.

Mr. DUVAUCHELLE. It was unanimous.

Senator MATSUNAGA. Thank you, again, for taking time out to testify before the committee.

Our next witness is Mr. Moses K. Keale, Sr., from the Office of Hawaiian Affairs.

STATEMENT OF MOSES K. KEALE, SR., TRUSTEE, OFFICE OF HAWAIIAN AFFAIRS

Mr. KEALE. Aloha, Senator Matsunaga, and welcome home to Kauai. I'm happy to see you well again, and as a fellow west-sider, my personal best wishes for your continued good health.

To you, Senator Inouye, and Congressman Akaka.

My name is Moses K. Keale, Sr., and I speak before you today in my capacity as a trustee of the Office of Hawaiian Affairs, representing the islands of Kaua'i and Ni'ihau. I was elected in the first OHA election of 1980, and have served as chairman of the board of trustees and presently serve as chairman of the committee on budget and finance. As a resident of Hawaiian home land at Anahola, I am the only OHA board member receiving the benefit of a homestead. This places me in a unique situation relative to the Department of Hawaiian Home Lands while serving as an OHA trustee, and it is the observations of this unusual position that I wish to share with you today.

The overall testimony of the Office of Hawaiian Affairs was shared with this committee by Joseph Kealoha on Monday, April 16, 1984 at the State capitol auditorium. Among other things covered by Mr. Kealoha in his testimony were five resolutions adopted by the OHA Board on November 4, 1983, supporting certain findings and recommendations made in volume II of the Native Hawaiians Study Commission Report. Those resolutions were submitted to you then, and I would like to call your attention to both the resolutions dealing with the Department of Hawaiian Home Lands.

One is a resolution urging Congress to review the implementation of recommendations adopted by the joint Federal-State task force on Hawaiian home lands in 1983, and to initiate breach of trust or other appropriate legal action for noncompliance by the State of Hawaii of the U.S. Department of the Interior.

The attitude in the homesteads when the task force was formed applauded this investigation, and homesteaders willingly stepped forward to testify and ventilate their years and years of frustration. The frustration continues, unfortunately, because the 134 recommendations of the task force have no clout in the form of law, but can seek only voluntary compliance for its findings.

The power to make change lies within the Congress, however, and as a homesteader I ask that this committee urge Congress to review the report of the Federal-State task force and exercise its authority to make the recommended changes.

As a member of the OHA Board of Trustees, an officially elected representative of the Hawaiian community working to better their conditions, Hawaii revised statutes mandates specific monitory efforts from OHA. We are bound by law to serve as the principal public agency in this State responsible for assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians.

Therefore, I ask that you consider this resolution:

Urging Congress to establish a single definition of native Hawaiian without reference to a blood quantum, and to provide appropriate protections to guarantee the rights and privileges of current Hawaiian home lands beneficiaries.

This is a sensitive and emotional issue that has been avoided for years. thus it continues to be a sharp and painful wedge between Hawaiians, as only a decision made by non-Hawaiians on behalf of Hawaiians can be. I recall that only recently a kupuna wahine in Kalapana spoke bitterly against the blood quantum, angry and hurt that her grandchildren might be considered any less Hawaiian than herself. I could only assure her that the OHA trustee stood firmly beside volume II of the Native Hawaiians Study Commission report, and would continue to advocate for change.

I want to submit for the congressional record these documents. In brief, they give you an example of what we homesteaders face because of the blood qauntum, and what more and more of us are unwilling to tolerate. Names are removed to maintain confidentiality.

Hawaiians, as you know, are a people that establish their bloodlines as a matter of tradition, pride and a sense of permanency as a race. We need to be connected to one another in all respects. Keep that in mind.

Exhibit 1 is a Department of Hawaiian Home Lands "Receipt of Information Relationing to Successorship" that states, among things:

> That because I am the only person in my immediate family who is a native Hawaiian as defined by the Hawaiian Homes Commission Act, 1920 (at least 50 percent

> Hawaiian), my spouse and children will not be able to succeed to my interest in a Hawaiian Home Lands tract.

Exhibit 1 goes on to say:

> My spouse and children and I will be able to live on, use and occupy Hawaiian home lands only as long as I am alive, and that when I die, my spouse and children will not be able to continue to live on, use or occupy Hawaiian home lands.

I ask you to consider the dehumanizing effects of a bureaucratic form such as this; the disrespect, the insult of having to deny your own flesh and blood.

Exhibit No. 2 is a letter from the chairman of the Department of Hawaiian Home Lands expressing condolences to the bereaved widow in paragraphs 1 and 2, and in paragraphs 3 and 4 reminding her of her late husband's plans to dispose of their homestead because she and the children didn't qualify for successorship.

This occurred in 1978, and while of her husband's death might be lessened by time, the threat of being homeless remains for herself and her children as the case is still unresolved. The argument over successorship can be a long and tedious ache.

Exhibit No. 3 is used with the permission of Attorney Michael R. Salling, who delivered these remarks to the Hawaiian Homes Commission on May 26, 1983 on behalf of his client. The parcel of land in question is the same referred to in exhibit No. 2. Mr. Salling eloquently expresses the frustration felt by many when he says:

> One of the tragedies of the present system is that it often pits family against family, and Hawaiian against Hawaiian. This is not the intent of the act. The act was intended to put Hawaiians on the land, not throw them off. This Commission should be dedicated to carrying out Kuhio's intentions, not only to a mechanical application of the Attorney General's opinions.

Exhibit No. 4 is an article which appeared in the Garden Island just this week, April 16, 1984, telling still another sad chapter of the ongoing saga. And Mr. Salling was prophetic in his remarks, as other family members have stepped into the picture—a brother of the deceased, and the brother's daughter, who just might take over the lease in spite of the wishes of the deceased. And in spite of the fact that he has five children of his own who simply can't measure up to 50-percent Hawaiian blood. It's a mess. A bitter and bitter, overextended mess.

I make these comments not as a criticism of the process, which is only symptomatic of the disease, but I would venture to guess that while this is only one documented example of what has occurred in my one neighborhood, it is not an unusual case. My guess is that it happens more often than any of us in places of responsibility care to admit.

We need to have the blood quantum issue reanalyzed and redefined. We have 60 years of experimentation, and it's time to admit that the experiment has been less than successful. Protect present beneficiaries and applicants through guarantees of rights and privileges, and urge Congress to establish a single definition of "Hawaiian," just as our Founding Fathers originally desired it to be.

Mr. Chairman, my testimony was prepared in advance. But just last night at the State legislature I got hold of a bill that is before the Governor to be signed, and I've prepared a short statement—if I could have another statement.

I would like to speak to one specific recommendation included in volume II of the Native Hawaiians Study Commission Report. That recommendation is to enact legislation to amend the definition of native Hawaiian to anyone with even a drop of Hawaiian blood.

In doing so, I'd like to share with you an experience at the Hawaii Legislature which is puzzling and indicative of the inconsistent approach which the State Department of Hawaiian Home Lands has taken in administering the Hawaiian Homes Commission Act.

The Department of Hawaiian Home Lands initiated the introduction of House bill 2194 to authorize payment, upon the death of a lessee of an Hawaiian homes lease, to the lessee's spouse or children who do not qualify to succeed in the lease, the net proceeds for the improvements made by the lessee.

While this legislation, which is awaiting the Governor's signature, is clearly introduced to protect families who no longer qualify to remain in their home because they are less then one-half Hawaiian blood, the State legislature in 1982 took a more permanent and humanitarian approach by passing legislation requesting the U.S. Congress to ratify an amendment to reduce the definition of native Hawaiian to one-quarter blood in order to succeed to a Hawaiian home lease.

Herein is the problem. If the Governor signs House bill 2194, he will in effect, invalidate the proposed legislation in Congress to reduce the blood quantum to one-fourth, and foreclose any chance of numerous families to remain on their homestead.

The approach utilized by the Department of Hawaiian Home Lands in treating this very serious problem which leads to the eviction of families in mourning is highly questionable because it subverts a proposed solution to provide more permanency and stability to many Hawaiian families, now before Congress. All it does is to pay off Hawaiian families who have less than 50-percent Hawaiian blood. It leaves them homeless in a world of million dollar condominiums.

Mr. Chairman, and members of the committee, I implore you to assist us in preventing the final execution of House bill 2194, and further, I ask that you act expeditiously to seek the ratification of the proposed legislation to reduce the blood quantum to one-fourth and resolve the blood quantum problem once and for all.

Thank you.

[The exhibits submitted by Mr. Keale follow:]

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

RECEIPT OF INFORMATION RELATING TO SUCCESSORSHIP

I, ____,
(Name of Applicant)

fully realize and understand that because I am the only person in my immediate family who is a native Hawaiian as defined by the Hawaiian Homes Commission Act, 1920, (at least 50% Hawaiian), my spouse and children will not be able to succeed to my interest in a Hawaiian Home Lands tract. I fully realize and understand that my spouse and children will be able to live on, use, and occupy Hawaiian Home Lands ONLY AS LONG AS I AM ALIVE and that WHEN I DIE, MY SPOUSE AND CHILDREN WILL NOT BE ABLE TO CONTINUE TO LIVE ON, USE, OR OCCUPY Hawaiian Home Lands. Nevertheless, with full knowledge and understanding of the above information, I hereby declare that I will accept an award of a Hawaiian Home Lands.

Should I be awarded a Hawaiian Home Lands lease, I understand that I have the following choices left in determining the disposition of my lease:

1. Transfer: I may request the Department's approval to transfer my lease to another qualified native Hawaiian.

2. Surrender: I may surrender my lease to the Department and thereby give up my right to live on, use, and occupy Hawaiian Home Lands. (See Section 209 of the Hawaiian Homes Commission Act and Section 7.05 of the Department's Rules and Regulations.)

3. Designation of Successor: Because my spouse and children are not qualified native Hawaiians, I shall only designate a successor to my lease who is a qualified native Hawaiian and who is also one of the following relatives: widows or widowers of my children, my grandchildren, my brothers and sisters, widows or widowers of my brothers and sisters, or my nieces and nephews. My designation must be in writing, must be specified at the time of execution of the lease, must be filed with the Department, and must be approved by the Department. However, I have the right to change my designation and make another designation in similar manner at any time I wish to do so. Upon my death, if the designated relative qualifies as a lessee and desires to succeed to my lease, the designated relative will receive all of my interest in my leased tract and the improvements thereon. My spouse and children will not have or receive any of the rights I had under my lease.

EXHIBIT 41

HH-61 (Rev. 11/22/77)

I have read the above statement and have been given an opportunity to ask any questions that I may have had. I fully understand my choices as to the disposition of a Hawaiian Home Lands lease that may be awarded to me and I make this statement freely, willingly, and without any reservation whatsoever.

IN WITNESS WHEREOF, I have executed this Receipt of Information Relating to Successorship this _______ day of _____________, 19 ___.

____
Applicant

I certify that I have personally answered all questions asked and fully explained the information contained herein to the Applicant on the day and year stated above.

____
Employee

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII

PROJECT OFFICES

WAIMEA OFFICE
P O BOX 125
KAMUELA HAWAII 96743

KEAUKAHA OFFICE
P O BOX 833
HILO HAWAII 96720

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
P O BOX 1879
HONOLULU, HAWAII 96805

PROJECT OFFICES

MAUI OFFICE
P O BOX 22
KAHULUI MAUI 96732

MOLOKAI OFFICE
P O BOX 198
HOOLEHUA MOLOKAI 96729

KAUAI OFFICE
P O BOX 332
LIHUE KAUAI 96766

October 25, 1973

Dear

SUBJECT: Residence Lot No. , Anahola, Kauai
J Deceased

We are saddened by the news of the passing of your husband. The depth of a personal loss can never be totally soothed.

Please extend our Aloha to your family. The Hawaiian Homes Commission and staff of the Department offer our sincere concern for your well-being during these difficult times.

Your late husband on October 15, 1975, executed a Will approved by the Hawaiian Homes Commission on December 5, 1975, designating the appraised value of the improvements less any indebtedness to the Department and for Real Property Taxes to the Legal Representative. This means that the lease would be terminated, improvements appraised, and the net proceeds would be forwarded to the Estate of your husband through the court. The homestead would then resume its status as unleased Hawaiian Home Lands, and the Department will lease this homestead to the next applicant on the Waiting List.

However, in a meeting with Mr. Roy K. Ah Nee of our Honolulu Applications and Loans Division and Mrs. Juliet K. Aiu, our Kauai Project Manager, on the morning of Monday, October 16, 1978, at our Kauai Project Office, you and your family indicated a concern of your continued occupancy of the homestead, the possible renouncement of the December 5, 1975 designation, and the succession of the lease by a qualified relative. We will consider a renouncement of the previously approved Designation of the appraised value, and the succession of the lease by a qualified relative. We regret, however, that we are unable to assure your permanent occupancy on the homestead, as this will depend totally on the permission and choice of the designated successor as was explained at the meeting.

LEND A HAND TO CLEAN OUR LAND OF HAWAII

EXHIBIT #2

The successorship process in this particular case will be a very long and time consuming effort on the part of you and your family, and the Department. Please be assured that during this interim, you may continue to occupy the homestead until a successor is finally designated by the Commission.

We understand that you will first of all research the Hawaiian ancestry of your granddaughter prior to considering the brothers and sisters, widows and widowers of brothers and sisters, and nieces and nephews of your late husband in determining a successor to Lease No.

We do understand the many matters you must settle during these times. Please process your research through our Kauai Project Office and keep us posted on your queries and findings.

We appreciate your concern, and thank you for your kokua. Again, our Aloha to you and your family.

Aloha Pumehana,
(With warm regards)

Merwyn S. Jones
MERWYN S. JONES, CHAIRMAN

RKA:dl

cc: J. K. Aiu, Kauai Project Manager

FERNANDES SALLING & SALLING
ATTORNEYS AT LAW
1347 ULU STREET
KAPAA, KAUAI, HAWAII 96746
PHONE 808/822-4661

REMARKS BY MICHAEL R. SALLING TO MEETING
OF HAWAIIAN HOMES COMMISSION ON
MAY 26, 1983

Good morning Chairman Padeken and Honorable Commissioners. I am Michael R. Salling, representing , who is unable to appear this morning. I want to thank you for the opportunity to discuss this case with you. It involves two problems for your consideration.

The first is that the heir or next-of-kin of the deceased lessee ( ) who is the legal child of the deceased lessee, , is being denied the right to be his successor.

Although the Department is apparently relying on an Attorney General's opinion in taking this position, there is a good argument to be made that s being discriminated against unconstitutionally. I have informed Chairman Padeken that my client is prepared to challenge her eviction in Federal Court. The family has stated that they will not leave this home voluntarily.

There is a second aspect to this case which may be more important however, and it could make any Court action unnecessary. As you know, the 1982 legislature passed a bill stating that the HH Act should be changed to allow those heirs of a lessee who are 25% Native Hawaiian, to be allowed to become successor lessees.

Since that time, we have not seen the Interior Department or our Senators or Representatives in Washington introducing the necessary legislation to do this. I think many people are beginning to ask why this has not been done? What is the policy of the Department? This should essentially be a rubber stamping action by the U.S. Congress, since these lands have been turned over to the jurisdiction and administration of the State of Hawaii.

It has been said that the Hawaii legislature showed no intention to make this bill retroactive, but that issue is irrelevant in my opinion. For this Department and Commission to take action to evict a qualified heir, after the passage of this bill, while doing nothing to push for the bill's enactment on the national level, is clearly unfair and illegal.

EXHIBIT #3

Remarks by Michael Salling
May 26, 1983
cont.

The Department should declare a moratorium on naming successors other than the children of deceased lessees, when the effect would be to evict a 25% native hawaiian who would qualify as to blood quantum under the new law.

One of the tragedies of the present system is that it often pits family against family, and Hawaiian against Hawaiian. This is not the intent of the act. The act was intended to put Hawaiians on the land, not throw them off. This commission should be dedicated to carrying out Kuhio's intentions, not to a mechanical application of Attorney General's opinions.

It may be that the same attorney general who wrote this opinion, also advised our governors that it was perfectly legal to take Hawaiian Homes Land anytime they wanted to use it for purposes benefitting other than native hawaiians.

We know what the Courts have said about that injustice committed on the highest levels of our state government.

I hope you will not force daughter to take this case to the courts. It will involve publicity and trauma which will not be beneficial to the Department, and which should not be necessary.

By postponing action on this matter, the honorable Commissioners can allow this case to be settled according to the intentions of the Hawa'i state legislature.

Thank you very much.

DATED: May 26, 1983.

Michael R. Salling

MICHAEL R. SALLING
Attorney for

The Garden Island April 16, 1984

A family split illustrates plight of Hawaiians

by William LeGr~

Col. 1

An Anahola family dispute over a Hawaiian Homes lease is the latest incident displaying the problems facing the program and the people it's supposed to be serving.

While the immediate issue is whether one member of the family is entitled to the lease, underlying the fight is the desperation many Hawaiians feel about their chances of ever getting a piece of the 200,000 acres the Department of Hawaiian Homes Lands owns.

IN ANAHOLA, the story goes like this (names are being withheld to protect the family's privacy):

Mr. K had a lease on an Anahola houselot, and built his house there, raised his family, and died. On an official notarized form, signed by Mr. K and then - Hawaiian Homes Commission Chairman Billie Beamer, dated Oct. 15, 1975, Mr. K stated the terms of successorship under the law had been "fully explained to me. I do not wish to consider any relatives."

Mr. K didn't want any of his relatives to succeed to his lease. Instead, he wanted the DHHL to appraise his house and pay his widow for it. Not having enough Hawaiian ancestry, neither she nor the couple's children could succeed to the lease. The children told The Garden Island their father didn't want to split the family by choosing one of the many cousins to succeed him. Instead, he wanted the lease to go back on the list of available properties and be awarded to the next qualified person on the waiting list, which now has more than 7,000 people on it.

IN A LETTER dated Oct. 25, 1978, then-Chairman Merwyn Jones expressed condolences to the now - widowed Mrs. K. Jones said the lease would be terminated in accordance with her husband's wishes, the net proceeds of the improvements (mainly the house) would be sent to her, and the property "would then resume its status on unleased Hawaiian Home Lands, and the Department will lease this homestead to the next applicant on the list."

Col. 1 (cont)

Col. 2

In that letter Jones also noted the family had expressed interest in renouncing Mr. K's will and having a qualified relative succeed to the lease. Although the department had earlier approved the will, Jones said the DHHL would consider renouncement of the will and allowing a relative to succeed.

But it would be a long and time - consuming process Jones said. And until a successor was found, Mr. K's wife and children – ineligible to succeed – could continue to live in the house.

AND SO THEY DID. They're still there, but have been told they will soon have to move to let a cousin who has been awarded the lease move in.

But everything had changed in the intervening years, the children say. They changed their minds about renouncing their father's will – strains had already developed as the search for a successor had begun. They say a cousin qualified by ancestry to succeed had first promised she would share their family home with them when she succeeded to the lease – and had then backed out of the promise.

Seeing the battle developing, the children say they went to see DHHL Kaua'i representative Juliet Aiu to call off the renouncement of the will and the search for a successor. They say they realized their father's wishes had solid foundation in reality.

THE CHILDREN SAY Mrs. Aiu called Honolulu for them and had the daughter speak to a DHHL official, who said he would see what he could do about stopping the successor search. He said he would send them a letter, the children say, but no letter arrived.

Con't Col. 2

Col. 2 (cont)

And the search went on. DHHL Ombudsman Ken Toguchi told The Garden Island the department placed four legal ads for a relative - successor, and the cousin who eventually got the lease was the only one to answer.

Toguchi said Mr. K's will made the property revert back to the control of the DHHL, which went looking for a successor. The decision, he said, was the Commission's to make, and the Commission decided to let the cousin succeed.

Col. 3

TOGUCHI SAID the department should have the check ready for Mrs. K this week (actually, the money will be loaned to the cousin, who will pay Mrs. K). If Mrs. K accepts the money, he said, "It's all over."

The children vow they won't leave their family home until the Hawaiian Homes Commission revokes the successorship and awards the property to the next applicant on the waiting list, as their father wanted and as the department previously said it would do.

Col. 4

They say their cousin's father – their own father's brother – is the one who got the successorship for his daughter. They claim there are seven people who will sign affidavits saying the uncle boasted he got the award for her by knowing the right people in the right places in government.

When the cousin was contacted by The Garden Island to get her side of the story, her father came on the line and said that "There was no will," that the award was made "by the books" and was "all legal."

The children say they won't leave their home under these circumstances. They are prepared to face the police and the courts.

Col. 5

With the money coming from the DHHL very soon, the showdown may be just around the corner.

MORE THAN 7,000 Hawaiians have waited up to 30 years for a lease, and those are the ones who qualify under the 50 percent or more Hawaiian ancestry rule. Mr. K's children – and there are more than 100,000 such part - Hawaiian people without the minimum 50 percent Hawaiian ancestry – are the targets of a Congressional bill to open up the lands to those of less than one - half Hawaiian blood. That change is probably far down the road.

The federal government is investigating the operations of the Hawaiian Homes program following a lawsuit by native Hawaiian groups. The department has been criticized for not getting proper compensation for its commercial leases and for "losing" thousands of acres of land through faulty record - keeping.

Col. 6

The Hawaiian Homes Commission Act has been in effect more than 60 years, and governs more than 200,000 acres of land expressly for the benefit of Hawaiians. Yet in Anahola land is so precious a family is split over a few thousand square feet. This is not the first article The Garden Island has carried about bitter divisions among Hawaiians over Hawaiian Homes, and it's likely not to be the last.

Senator **Matsunaga**. Thank you very much.

Senator **Inouye**. Mr. Keale, as you pointed out, a bill was passed last year. Specifically, it asked Congress to ratify an amendment which called for the reduction of 50 percent blood quantum to 25 percent.

Now, in your testimony, you speak of no percentage quantum. Are you satisfied with 25 percent for successor purposes?

Mr. **Keale**. Senator, I'm looking at this as one step at a time. At the present time, it's 50 percent. Legislation has already been passed in the state legislature for reduction of survivorship to 25 percent. The bigger issue of, to one drop of Hawaiian blood, I look at down the road. To me, the 25 percent is over one hurdle; and right now, it's up to Congress.

Senator **Inouye**. It's your recommendation that we ratify 252, but reject the most recent bill that was passed?

Mr. **Keale**. Yes; because that takes it back to 50 percent.

Senator **Inouye**. Well, 252 says that to qualify, you must have 50 percent.

Mr. **Keale**. Right.

Senator **Inouye**. If your survivorship is 25 percent.

Mr. **Keale**. Yes.

Senator **Inouye**. Thank you, Mr. Keale.

Senator **Matsunaga**. Thank you very much.

Our next witness is Mr. Rod Burgess, the vice chairman of OHA. Good morning.

STATEMENT OF RODNEY KELIIMAHIAI BURGESS, TRUSTEE-AT-LARGE AND VICE CHAIRMAN, OFFICE OF HAWAIIAN AFFAIRS

Mr. **Burgess**. Good morning, Mr. Chairman, Senator Inouye, Congressman Akaka.

My name is Rod Burgess, vice chairman of the Office of Hawaiian Affairs, and a member of the Federal/State Task Force of the Hawaiian Homes.

The Federal Government and the courts have long recognized that this country has a unique obligation toward native Americans and have upheld legislation creating programs to benefit the aboriginal people who lived in the areas which eventually became part of the United States. However, these programs benefit primarily American Indians, not native Hawaiians. This is true even though native Hawaiians meet most of the criteria which entitle indigenous groups of Federal protection and services.

Of the 97 Federal programs available to native Americans, Hawaiians are eligible to participate in only three of those programs—those established by the Native American Program Act, the Job Training Partnership Act [CETA], and the programs of the National Institute on Drug Abuse.

Hawaiians are excluded from the vast majority of programs benefiting native Americans because the Federal Government restricts those programs to groups located in the continental United States. There is a serious question whether this restriction violates the equal protection clause of the U.S. Constitution.

Some of the programs available to Indians, but not Hawaiians, include those for vocational training, health care improvement, self-determination, education, employment assistance, economic development loans, housing assistance, and child welfare.

Clearly, the United States has an obligation to redress the consequences of the illegal overthrow of the Hawaiian Government in 1893. These consequences go far beyond the loss of land rights or interests. The loss of sovereignty and self-determination, the imposition of a foreign culture and the introduction of foreign diseases have caused psychological, social, and cultural consequences that are all too evident today.

Statistics and studies have consistently shown that Hawaiians today have the lowest estimated life expectancy of all ethnic groups in the islands; they have the highest incidence of cancer in the Nation; are far more likely to suffer from diseases such as high blood pressure, diabetes, arthritis, and heart trouble; the accident death rate for Hawaiians is three times that of other races; Hawaiian babies under 1 month have the smallest chance of survival of all ethnic groups; Hawaiians have the highest rate of teenage births and pregnancies, the poorest record of prenatal care, and the largest families in Hawaii.

Hawaiians have the highest rate of separation and divorce of all groups surveyed.

Hawaiian men are more likely to commit suicide than any other race.

Hawaiians, as a group, are the most frequently arrested for felonies and make up 45 percent of the adult prison population and 60 percent of youth correctional facility residents.

Hawaiian children consistently score below average on achievement tests, and are more frequently absent from school; are more likely to be mentally retarded, handicapped, or have learning disabilities.

Hawaiians have the lowest representation in Hawaii's university system, are underrepresented in high status occupations, and are overrepresented in low status jobs. They have the lowest family income in the State.

The unemployment rate for Hawaiians is two to three times higher than the State average.

There can be no doubt that the condition of today's Hawaiians is a direct result of their contact by foreigners and the subsequent loss of their land, their sovereignty, and their culture.

The six mainland Native Hawaiians Study Commissioners say—and I'm quoting from volume I of their report:

> That the social and economic problems of native Hawaiians deserve immediate—and they underline that word—action and that these needs should be addressed promptly.

However, they go on to say that the Federal Government has no moral or legal responsibility and that the needs of native Hawaiians should be met by private individuals and organizations and by local government.

This callous and irresponsible conclusion cannot go unchallenged, and I am confident that the honorable members of this committee will deal with it as the piece of ohala (trash) that it is.

The minority report, volume II, recommends the inclusion of native Hawaiians in all native American programs, without prejudice. I support that recommendation. But I agree even more strongly with another of the recommendations in volume II. It calls for special legislation to establish special programs for native Hawaiians at the Federal level. Although native Hawaiians and American Indians have suffered badly at the hands of the U.S. Government, we are separate peoples with separate problems, which in many cases require individual solutions.

We are a distinct native group with our own culture, language, and traditions. At the time of the illegal overthrow in 1893, the Kingdom of Hawaii was fully recognized as a member of the international community of nations.

Our status as a sovereign nation, our pride in our unique culture, language, and heritage, our right to self-government and self-determination, were all sacrificed for the sake of foreign interests supported by the armed might of the U.S. Government.

We come to the Congress not as beggars, but as a people determined once again to become economically independent, productive, and self-sufficent. We can manage our own affairs and resources, according to the changing needs of our people. We ask for your help and kokua.

Mahalo.

Senator MATSUNAGA. Thank you very much, Mr. Burgess.

You will be pleased to know that the Vocational Training Act's amendment is now before the Senate Committee on Labor and Human Resources—and an amendment which I will be offering has the support of the overwhelming majority of the committee. It will mean that native Hawaiians will be included in the term, native Americans—and will share the funds, about $17.6 million along with the American Indians and other native Americans.

Our next witness is—I understand that the mayor is here, now. So I'll call upon Tony Kunimura, mayor of the county of Kauai, to testify now.

Mr. Mayor, we'd be happy to hear from you.

STATEMENT OF TONY KUNIMURA, MAYOR, COUNTY OF KAUAI

Mayor KUNIMURA. Thank you. I'm awfully sorry—the plane was delayed there. They had to take those Japanese travel agents to a place in Coco Beach and I guess they waited to have lunch with them also.

I remember when I was very young, and sat here as a member of the board of supervisors, and Charles Day Rice came up and spoke to the board. And he use to stop half way and catch his breath, and come up again. I made 61 last year, and I'm about in the same condition. Mr. Rice was 70 when that happend to him so—

Anyway, thank you very much, Senator Matsunaga, Senator Inouye, and Congressman Akaka, for coming to this very small island and very small county. Your presence here shows that you care and I think that's what life is all about—when you know that somebody cares. And the question of righting a wrong that was done so long ago, has been a long-forgotten issue, and rekindled several times and someway or somehow, I feel that the conscience of America is at trial now.

And all over the world, we have shown to other parts of the world, and other nations, the greatness of America, and that it's America's gut feeling to admit when we're wrong and to right a wrong if we did commit a wrong. And all indications show, and I'm not going to read my testimony, if its' OK with the panel.

Senator MATSUNAGA. Your statement will appear in full in the hearing record, and we would appreciate it if you would summarize your statement.

Mayor KUNIMURA. Yes; and so I'd like to say that knowing America, someday, somewhere, it's going to have to be addressed and reparation—and first, an admission that a wrong was done. And second, to somehow—you can never, you know, adequately fulfill an obligation for the wrong done for those who have already gone. But for those who are here and those who will be coming, that we're going to have to address this. And I don't think that America is going to be clear until these things are cleared.

And I know all the hearings we've in the past several years—and I guess this is the last island you're appearing at. The facts are always the same. You cannot change the facts. And I know that you will prevail on your colleagues in Congress. And character should begin at home, and show that the great injustice done so long ago must be addressed now.

The proper admission and the proper restitution should—material or otherwise—it's going to have to be decided upon.

And I'd like to lend the support of all nonindigenous Hawaiians of the county of Kauai—that we're in support of—the vast majority are in support of righting this great wrong.

And I'd like to say again, before you leave, that I've always known that charity always and should begin at home.

Thank you.

[The prepared statement of Mayor Kunimura follows:]

TONY T. KUNIMURA
MAYOR

JOSHUA HEW
ADMINISTRATIVE ASST.

OFFICE OF THE MAYOR
4396 RICE STREET
LIHUE, KAUAI, HAWAII 96766

April 20, 1984

Honorable Spark M. Matsunaga
and Members of the Committee
on Energy and Natural Resources
3104 Prince Kuhio Building
Honolulu, Hawaii 96850

Dear Senator Matsunaga and Committee Members:

Re: Testimony of Tony T. Kunimura Regarding the Report of the Native Hawaiians Study Commission

In 1893 the Hawaiian people lost their monarchy through the overthrow of the legal government of Hawaii by a rebellious faction comprised mainly of foreign merchants and landowners. The involvement of representatives of the government of the United States of America in the overthrow of the monarchy has been documented, and has been argued about for many years. Irrespective of what has been said pro or con on the issue, after investigating the facts, I believe sincerely that the United States government, through its Minister John Stevens, did actively support, aid and abet the rebels in overthrowing the Hawaiian monarchy. Through the use of its ships and marines, the United States government was instrumental in making the Hawaii monarchy yield to the power of the gun. President Grover Cleveland himself described the United States of America's involvement in the overthrow as a "lawless landing of the United States forces at Honolulu."

To repeat, I state that these are my beliefs based upon my knowledge of the facts. Each and every one of us has to look at the facts and see at what conclusion one arrives. In full consideration of morality, reasonableness, equity, justice and fair play, I can arrive at no other decision that the United States government wrongfully supported and participated in the overthrow of the Hawaiian monarchy.

The sudden loss to the Native Hawaiians of their honored, respected, and matriarchal queen, Liliuokalani, and her replacement by a provisional government consisting of materialistic foreigners, accelerated tremendously the decline of the Native Hawaiians--a decline from which the majority of the Native Hawaiians has not recovered. We all must remember that the monarchy of Hawaii, to the Native Hawaiians at the time, symbolically embodied all of their cultural heritage; and irrespective of western influences on the Native Hawaiians, always was a source of pride for these people. With the abrupt eradication of the monarchy, the Hawaiians lost their sense of culture and pride in their culture. Probably the greatest loss to the Hawaiian people was the loss of something that was critical for the capturing of the emotions and nuances of their history and culture--their native language. Am I telling any one of you in the listening audience something which you do not immediately recognize? Is there any among you who would doubt that far too many Native Hawaiians today suffer from a loss of identity, a loss of culture and therefore feel not to be a part of this system which governs and controls their native land? With the loss of the monarchy and the resultant loss of pride, culture, language, the Native Hawaiians were not able to revert to their traditional way of life, were in fact a conquered people, and were effectively excluded from the new system in control.

Just about every negative social statistic underscores the present day plight of the Native Hawaiians. That a once proud, beautiful and benevolent people should now lead the population in just about every negative aspect connected with today's society, overwhelmingly underscores the true impact of the overthrow of the monarchy in which the United States government had such a decisive hand.

It is arguable and plausible that had the overthrow not occurred, eventually, through the passage of years, Hawaii would have formally associated with a western nation. But this association would nave been gradual, done willingly and with the interests of the Native Hawaiians at the forefront.

There would not have been the loss of culture, pride and identity as there now is as a result of the abrupt usurpation of the Hawaii monarchy. There would not have been feelings of helplessness, a collective loss of sense of direction and feelings of inferiority and resentment toward those in control.

So far I have presented to you the facts surrounding the United States' involvement in the overthrow of the monarchy, the effect on the Native Hawaiians of the overthrow, and now I will proceed to discuss whether something should be done by the United States government; and if so, what should be done to aid the Native Hawaiians. As to whether the United States government should take steps to correct the situation, I quote no less a person than Grover Cleveland the then-President of the United States. "If a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States cannot fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation." This statement by President Cleveland recognizes a power--a power not as easily recognizable as those powers of political and economic might--but a power nonetheless much more important. And that is the power of the United States to recognize and strive for justice and fairness; a power based on fundamental principles of morality.

I am not saying that the United States government has been totally ignorant of the plight of the Native Hawaiians. What I am saying is that efforts made by the federal government to remedy this situation has been ineffective. Case in point is the enactment of the Hawaiian Homes Commission Act of 1920. While the goals of the Act were commendable and couched in terms of rehabilitating the Native Hawaiians, the actual result has fallen far short of its stated goals; which is understandable given that "arable land of proven quality was specifically excluded from the program." Failures such as these cannot be reconciled with President Cleveland's unequivocal condemnation of the United States' participation in the destruction of the Hawaiian monarchy. The loss of dignity and cultural identity of the Native Hawaiian people cannot be repaired through any form of reparation or restitution. However, basic decency at least requires an admission of wrongdoing on the part of the federal government. I wish I knew the answer to the question of why it is easier to get money from a government then to get that government to admit its perpetration of a wrong.

Once we have that admission, what more can be done to help the Native Hawaiians who feel that they have been torn away from their cultural sources? Some have suggested the giving of money to the Native Hawaiians, others land and the more radical have suggested the State of Hawaii. Better people than I have argued this issue, and better people than I will have to answer this question should the United States of America ever decide to pursue righting the wrong that was done so many years ago. However, I would just like to point out that the giving of money to the wronged people is not unprecedented; for example, look at the American Indians and the Eskimos. Also, neither is it unprecedented for the giving of land. I will also add that presently the federal government holds title to 400,000 acres in the State of Hawaii, to include the Island of Kahoolawe. Does the United States really need the island?

I conclude by stating that what I have presented are merely the thoughts and beliefs of one, humble man who knows of innumerable instances of our great Nation recognizing and correcting injustices. I sincerely hope and pray that I will soon know of another.

Very truly yours,

Tony T. Kunimura

TONY T. KUNIMURA
Mayor, County of Kauai

Senator MATSUNAGA. Thank you very much. We certainly appreciate, Mr. Mayor, your taking time out of your busy day to be with us. Thank you very much.

Our next witness is former chairman of the Native Hawaiians Study Commission, one who exercised great courage in going against the majority of the Commission, and leading the minority of three and filing a minority report which we feel is based on the facts insofar as its recommendations go. We are happy to call at this time, Kina'u Boyd Kamali'i.

STATEMENT OF KINA'U BOYD KAMALI'I, CHAIRPERSON, NATIVE HAWAIIANS STUDY COMMISSION

Ms. KAMALI'I. Senator Matsunaga, Senator Inouye, and Congressman Akaka—thank you very much. Mr. Chairman, thank you for this opportunity to present the concluding testimony to the U.S. Senate Committee on Energy and Natural Resources.

These hearings have, rightfully, focused on the disagreements between volumes I and II of that report. In particular, testimony prepared and presented to the committee has stressed the errors of fact, interpretation and application of cultural, historical, and legal analysis contained in volume I's treatment of native Hawaiian claims.

I will be followed by a number of witnesses who were unable to testify in Honolulu, but they were here this morning. They are Mr. Neil Levy, professor of law, Golden Gate University School of Law; Dr. Richard Immerman, diplomatic historian from the University of Hawaii at Manoa; Mililani Trask, a practicing attorney in the State of Hawaii; Linda Delaney, a former Hawaii director of the study commission; Mrs. Winona Beamer, a study commissioner and noted educator from the Kamehameha Schools; and Mr. Rodger Betts, also a study commissioner and corporation counsel of the County of Maui.

Mr. Chairman, I also would like to enter into the record the testimony of Dr. Lawrence H. Fuchs who is the chairman of the department of American studies in Brandeis University.

Senator MATSUNAGA. Without objection, it will be included in the record.

Ms. KAMALI'I. Through the course of these years, witnesses have stepped forward to urge this committee to formally reject the findings and conclusions of volume I, and then to adopt the dissent of volume II as guidance for future actions by the Congress.

We realize fully that the hoped-for settlement of native Hawaiian claims will take time. As recommended in volume II, this settlement process will require:

One, an acknowledgment from the Congress that the United States acted illegally and immorally in the overthrow of the Kingdom of Hawaii, and subsequently during the American annexation of the islands in 1898;

Two, a willingness by Congress to directly intervene in the settlement of these claims by enacting special legislation to address and redress the harm and losses of domain and dominion by the Hawaiian people; and

Three, skillful negotiation with and retification by the Hawaiian people of my proposed settlement.

This process may be long—it will certainly be difficult.

If you were to turn to me today and say, "OK, Kina'u—my colleagues in the Congress are willing to vote on reparations and restitution tomorrow, what do you want? Tell us what's fair and just, and we'll pass it."

Gentlemen, I couldn't answer you.

No one could.

The settlement of native Hawaiian claims will require sensitive negotiation, a willingness to compromise, and an active openness of mind and imagination—of all those involved.

As with the Alaskan claims, I believe that this process will involve the Congress, the Federal departments, the State of Hawaii, and the people of Hawaii.

I am personally deeply angered and disappointed by anyone who would endanger the integrity of that process.

It is a great disservice to all, if any of our leaders—Hawaiian or non-Hawaiian, State or Federal—attempt to dictate or delete any option which has not even been discussed as outside consideration.

It would be just as irresponsible and unrealistic to insist that all of the former crown and government lands should be returned to native Hawaiians in a settlement.

We can, and I am confident that we will, forge the mutual trust, understanding and mechanisms of due process which will inevitably lead to a settlement acceptable to the vast majority of those concerned.

As I said earlier, though, this process and all that needs to be done to prepare ourselves will take time.

I would like to urge this committee and the Congress to initiate those actions which can begin immediately in at least three areas.

The most important of these initiatives is Federal action to restore the integrity and the corpus of the two trusts which have native Hawaiian beneficiaries—the Hawaiian home lands trust and the ceded lands trust.

These trusts are not issues of contention between the two volumes of the final report. In fact, it is evidence of the manipulated mandate pursued by the majority, that one of these is ignored and the other subject only to a superficial audit of office practices.

Let me speak briefly, first, about the Hawaiian homes trust.

Our best estimates indicate that about 28,000 acres of the nearly 200,000 acres set aside by the Congress for this homesteading, farming, and ranching program for Hawaiians have been awarded for the purposes of this trust; 30,000 acres have been illegally set aside for nonbeneficiary uses by the Federal and State Governments.

These transfers have been effected through a series of executive orders by territorial and State Governors—without the allowed exchange of lands permitted in the act, or rent as permitted by general leases. The lands have, simply, been misappropriated.

By the terms of the act and the covenant which was imposed at statehood, the Federal and State Governments swore to protect and to abide by the maintenance of this trust. They have not done so.

A recent joint Federal-State task force on Hawaiian homes noted this same discrepancy and violations of trust responsibilities. However, since their report was issued last August, we have been treated to the spectacle of the Navy claiming fee ownership of Hawaiian home lands in Lualualei, and a refusal by the State to begin negotiations on illegal set-asides and which they illegally hold.

It is for the Congress to initiate breach of trust action against the State of Hawaii and to encourage the Department of Justice review of Federal violations as well.

Offending departments and levels of government are not voluntarily responding. I urge the Congress to apply some well-deserved and needed pressure on those who refuse to repair the damage done to this trust.

The ceded lands trust, unlike Hawaiian homes, includes all of the citizens of Hawaii as its beneficiary class. Native Hawaiians are, however, mentioned as a particular group deserving of State consideration in the distribution of revenues and the use of these former crown and government lands of our kingdom.

The lands constrained by this trust were returned to the State of Hawaii in 1959. At that time, the United States retained control over approximately 400,000 acres of the lands transferred at annexation. The bulk of these lands were designated as irretrievable—the fee simple property of the Federal Government for national parks purposes.

However, an estimated 70,000 acres were marked as subject to review and possible return to the State. In the 25 years since statehood, less than 600 acres have been returned.

The recommendation of volume II is that a Joint Federal-State Ceded Lands Commission be established to systematically and periodically evaluate the continued use and need for these lands, and be empowered after such a review to declare unneeded lands "surplus" and returnable.

Since 1959, two similar reviews have been conducted. However, these evaluations have been made by the Department of Defense—the tenant of these lands.

I cannot believe that an independent use audit of these same properties would not result in significant recommendations for release and return.

There are, of course, serious national defense needs which would require certain lands. However, there are just as clearly nonsecurity related uses which should be discontinued.

For example, Bellows Air Force Base now functions virtually as an exclusive and private military beach.

Only the Cannon Club remains at Fort Ruger.

There are, to my knowledge, at least four private military golf courses on Oahu for different branches of the military—all within a 10-mile radius of each other.

These uses are not legitimate strategic uses of trust lands by the Federal Government. And, as explicitly stated in the Resolution of Annexation, these lands are a trust to be used, and I quote: "for the benefit of the inhabitants" of Hawaii.

A freeze should be announced affecting the status and use of these lands, pending civilian review.

Last, as others have detailed, native American status and Hawaiian inclusion in existing programs must be pursued for immediate benefit and betterment of native conditions.

Let me underline here that the sole area of total agreement within the study commission was the desperate social condition of Hawaiians—and the imperative for immediate action.

Mr. Chairman, on behalf of all of the people of Hawaii, I would like to express our deep appreciation for your patience and your presence here. The willingness of the entire Hawaii congressional delegation to join you in a show of support and commitment to the resolution of very difficult issues is a demonstration of profound dedication.

I am apprehensive that your colleagues in Congress will review the overwhelmingly endorsed stance for rejection of volume I and endorsement of volume II as somehow predictable. There could be a tendency to discount this virtually unanimous presentation as hometown cheering.

Please, Senators, Congressman Akaka, as I know you can, impress your fellow Congressmen with how unusual, if not unique, this demonstration of conscience and conviction truly is. Ask them if they can provide a comparable example from their own States.

Democrat and Republican, elected leaders ranging from the Lieutenant Governor to State legislators to county mayors and county councils—coming before you not as individuals, but as spokesmen for their representative bodies, carrying resolutions and petitions expressing the will of their full membership.

Please convey to those in Washington that such a coalition of conscience has not been known in the islands before. The only exception in my experience was the common purpose of World War II.

Also please take back to Washington that the Hawaiian people are united in purpose and resolve. And that this commonality may be even more unusual than the same demonstration by elected officials and representative bodies.

And impress upon them, that this coming together, this spirit of onipa'a—will not need to be doubted ever again. And I would like at this time to say, Mahalo, to the Royal Order of Kamehameha, the Awu Hui Kaahumanu (phonetic), the Daughters and Sons of Hawaiian Warriors, the State Association of Hawaiian Civic Clubs, to the Office of Hawaiian Affairs, to the sons and daughters and the trustees of Lunalilo Homes, to the Bishop Estates, and the many, many, many people who have come forth. The Hawaiians have, and in spite of all odds, and in disregard of all conventional wisdom, joined in common cause.

And we are together for good.

Mahalo Nui Loa A Me Na Na Akua E Malama Pono.

[The prepared statement of Dr. Fuchs follows:]

TESTIMONY OF LAWRENCE H. FUCHS

Chairman, Department of American Studies
Walter & Meyer Jaffe Professor of American Civilization and Politics
Brandeis University
To the United States Senate Committee on Energy and Natural Resources on the Subject of the Culture, Needs and Concerns of Native Hawaiians
April 16, 1984

Mr. Chairman, I am honored to have been invited to testify before the Committee on this important subject, and regret that I am not able to be with you in person due to prior commitments.

I very much appreciate the work done by Senators Inouye and Matsunaga dealing with the situation of native Hawaiians. I am aware that there were important differences of opinion among the members of the Native Hawaiians Study Commission with respect to the role of the United States in the 1893 overthrow of the monarchy, and that members of this committee would like to have my opinion on that question because I have done research and written on the political and ethnic history of Hawaii.

Since history is far from an exact science, I doubt that anything I could say would persuade those who were in the majority on the Native Hawaiian Study Commission that they were wrong. In fact, I do not think it is a matter of great consequence as to just how involved was the United States government in the overthrow of the monarchy in 1893 As I read the record, there is no question that the United States government participated in that overthrow through United States government officials. It does not matter that an overthrow might have taken place without that assistance; it does not matter that other foreign governments would have taken whatever opportunity presented itself to devour Hawaii; and it does not matter that, had there been no overthrow, the Hawaiian people would never have known the protection and benefits of the Constitutional government of the United States or the opportunities afforded by participation in a common market continental economy.

What matters is that most native Hawaiians would not have chosen to overthrow the monarchy or to be annexed to the United States and that both events accelerated the undermining of the culture of native Hawaiians.

In these deliberations, these three basic facts should shape the policy agenda of the United States:

1. Through its agents the United States government participated to some degree in the overthrow of the monarchy;

2. The forebears of today's ethnic Hawaiians, unlike immigrants, did not choose the protection of the Constitutional government or the opportunities of the continental economy of the United States;

3. The clash of cultures between native Hawaiians and others affected the mental and physical health of Hawaiians adversely.

Conquest and annexation does not usually lead to a consideration of such matters by the victors. Conquering nations usually absorb, extinguish, segregate and/or oppress conquered peoples; they do not usually struggle with the nature and extent of their moral, political and juridical obligations to them.

The United States of America today is different. As a nation, we try to face up to the consequences of actions which are harmful to some groups. We do this in many ways with respect to native American Indians. We recently recognized the unjustified incarceration of Japanese-Americans during World War II. We have acknowledged at least some responsibility for the refugees of Vietnam, and we have tried in a variety of ways -- mainly through affirmative action programs -- to deal with the legacy of slavery and segregation for black Americans.

What to do in this case? First, we should stop quibbling about the three facts stated above. While James H. Blount's account of the overthrow of the monarchy, charging substantial involvement of the United States government, seems to be right to me, I do not think that public policy toward native Hawaiians should depend one whit on the degree of that involvement.

We should adopt an approach which looks at the situation and realistically assesses alternative ways of dealing with it. In doing this, we should be totally honest as to what kinds of actions will not be taken by the United States government. There will be no return to the monarchy. There will be no reparations in cash payments to those who can demonstrate they are descended from the 40,000 native Hawaiians who were living at the time of the overthrow of the monarchy. The United States will not submit to an international tribunal the question of who was responsible for the loss of the independence and sovereignty of the Hawaiian Kingdom. Nor will the Congress recognize the Hawaiian people as a "domestic, dependent nation" exercising inherent powers of a limited sovereignty over a particular piece of land as has been done under Congressional authority for Indian tribes. Finally, there will not be an expression of apology in a Congressional resolution or Presidential pronouncement for the 1893 overthrow of the monarchy.

The majority report of the Native Hawaiians Study Commission asserts that there is no basis for a claim of sovereignty by native Hawaiians, a position which I readily concede. But the majority also asserts that "there is most likely no specified trust relationship between the United States and the native Hawaiians established by law of the United States. . .at most there is a very limited special trust."

This grudging concession is squeezed from several paragraphs of legalistic argument worthy of an experienced Jesuit or Talmudist. The facts alleged above justify the unequivocal assertion that native Hawaiians should be recognized as meriting a special trust relationship with the United States. Indeed, such a de facto relationship already exists, even though it has not been formally recognized. The federal government has implicitly acknowledged a trust relationship through legislation and other government decisions in the past. The major act of Congress in this regard is the Hawaiian Homes Commission Act, passed by Congress in 1920, which placed over 200,000 acres of land to be used for the development of homes, ranches and farms for the benefit of those with fifty percent or more Hawaiian blood. Although this was only a fraction of the more than 1.75 million acres of Government and Crown Lands ceded to the United States by the Republic of Hawaii at the time of annexation, it seems to me that the Act was based on an implicit assumption that the United States had a trust obligation to native Hawaiians, even though Congress did not make a formal declaration of such a relationship.

At the time of the admission of Hawaii as a state to the federal union in 1959, the Congress specified in transferring ceded land back to the state that native Hawaiians should be treated by the state as special beneficiaries of the ceded land trust. Once again implicitly recognizing the special trust relationship had been established, the Admission Act actually used the word "trust" by specifying that failure to use the land and funds as specified "shall constitute a breach of trust, for which suit may be brought by the United States."

In the minority report of the Native Hawaiian Study Commission, other examples were given that demonstrate clearly that Congress has undertaken a _de facto_ fiduciary relationship towards native Hawaiians. In 1974, Congress made Hawaiians eligible for participation in programs for native Americans. In 1978, Congress amended the Comprehensive Employment and Training Act to include Hawaiians in the Indian Manpower Program administered by the director of Indian and Native American programs of the Department of Labor. And, as the minority report of the Native Hawaiian Study Commission pointed out, the 95th Congress also included Hawaiian natives in the coverage of the American Indian Religious Freedom act passed in 1978. Since a _de facto_ relationship already exists, [redacted] I agree with the recommendation of the minority on the Native Hawaiian Study Commission that it would be highly desirable for Congress to formally acknowledge its trust relationship to native Hawaiians, and for the United States government to think through more carefully what that trust relationship entails.

I do not make this recommendation lightly. As a general rule, I do not believe there is such a thing as group rights under the Constitution of the United States. There are group sensibilities, interests and claims. Public policies which reward benefits to individuals solely because of their ethnic or racial or group membership are dangerous because they may tend to promote ethnic fragmentation and also because they may be managed in such a way as to infringe on the individual rights of others.

Having said this, I am unequivocally for the establishment of an explicit fiduciary relationship between the federal government and native Hawaiians, putting aside the question of how one defines a native Hawaiian. This government and [redacted] the people it represents have benefited enormously by the annexation of Hawaii and its admission to statehood. Yet, one group -- native Hawaiians -- is ambivalent about those benefits. One group -- and only one group -- can claim substantial losses, not just of a monetary kind or even land, but of a deeply social and psychological nature. That group, like native American Indians, who in the cases of many tribes also have the advantage of a quasi-sovereign relationship with the United States based on treaties, is entitled to special consideration under a trust relationship.

Following the declaration of acknowledgment of the trust relationship, Congress should direct a special joint select committee composed of members of both houses of Congress to inquire into the extent to which various programs now aiming to benefit native American Indians should also be applied to Hawaiians, and whether or not a special Bureau of Native Hawaiian Affairs should be established in the Interior Department to help to promote and coordinate such programs.

At the present time, the Bureau of Indian Affairs administers the Indian Child Welfare Act (Title II grants) which gives assistance in the placing of foster children and to Indians in the operation of child and family services programs; the Employment Assistance Program, which provides vocational training grants; the Indian Housing Assistance Program; a program to provide business assistance to Indians; the Indian Education Program, to encourage Indian students to continue their education and training beyond high school; and an overall Indian development program under the Office of Indian Development, which includes a variety of support services. The Bureau also administers a program to provide loans to Indians and Alaskan natives and another one to help Indians gain greater control over their own cultural destinies.

While some of these programs, and others which will be mentioned below, are justified on the basis of the special tribal relationship of Indians to the polity as a whole, many of them are based on a fiduciary relationship between the federal government and Indians. Consideration should be given to all of them with respect to their desirability for native Hawaiians.

That is also true of programs administered by other departments of the federal government. Included for consideration should be the Indian Education Program in the Department of Education, which provides for special help for adult Indian education, fellowships for Indian students, and grants to local education agencies to meet the special educational and culturally related academic needs of Indian children. There is even a small program in the Department of Education to plan, develop and implement programs and projects for the improvement of educational opportunities for Indian children.

The Department of Health and Human Services already has a major office called "Administration for Native Americans" which provides a focus for special concerns of American Indians, Alaskan native, and native Hawaiians, aimed at assisting all of them in achieving the goal of economic and social self-sufficiency. The select Congressional committee should look into the extent to which the Department has assisted native Hawaiians and what could be done to improve that record. It overseas a large program to improve Indian health, which includes some 51 hospitals, 99 health centers, and several hundred field health stations to raise the health status of American Indians and Alaskan natives. Is there an aspect of this program which would be applicable to native Hawaiians?

The same question can be asked of other special Indian programs, such as the Indian Community Development Block Plan Program, now approved only for Indian tribes, which is aimed at helping Indian tribes and Alaskan natives in the development of Indian communities and is administered by the Department of Housing and Urban Development. It can be asked of the employment and training program for Indians and native Americans run by the Department of Labor, a program which already specifically includes native Hawaiian communities as eligible. How is that program working, and how can it be made to work more effectively for native Hawaiians?

The Joint Congressional Committee also should assess the impact of various equal opportunity programs on native Hawaiians, with a view toward making them more effective for that population. Such programs are not based on a trust relationship but on recognition that there are certain members of our society whose opportunities are likely to have been limited because of membership in particular groups, native Hawaiians among them. Among those programs to be considered: minority business development; minority business assistance; minority small business investment companies; minority-owned financial institutions, all administered by the Department of Commerce. Also worthy of consideration are: bilingual education programs; special service programs for disadvantaged students; and upward-bound programs administered by the Department of Education.

How have Hawaiians been assisted by the Center for Minority Group Mental Health programs run by the National Institute of Mental Health? What more should be done? Have Hawaiians benefited from lower-income housing assistance programs in the Department of Housing and Urban Development? Have they benefited from equal opportunity programs run by the federal government and administered by the EOC?

To summarize, such an inquiry should highlight the importance of the federal government discharging its obligations under its trust relationship with native Hawaiians. There should be a focus of leadership and energy in the federal government to oversee the fulfillment of that continuing obligation. In all this, native Hawaiians themselves must be involved. Of course, there will be different voices, various opinions, and conflicts among native Hawaiians, ~~themselves~~. There will be mistakes in assessment, waste in management, and occasionally policies and programs which are ~~unhelpful~~ ineffective in meeting the goal of helping native Hawaiians to sustain higher levels of mental and physical health leading to their greater sense of well-being. But the goal should be clear. The quest of native Hawaiians for cultural integrity and spiritual and physical well-being should not be trivialized by an argument about reparations.

Finally, it should be acknowledged that there are limitations on what the federal government or any government can do to assist those native Americans who wish to maintain a strong sense of cultural identity and family and personal health. The will, drive and interest in doing that must come from native Hawaiians themselves. Individuals who choose to leave that culture even though they have a substantial Hawaiian background should not be stigmatized by anyone. A free society permits individuals to choose or not to choose a strong ethnic identity. Yet, one of the remarkable things about the American experiment is that so many individuals have found it possible to derive a sense of strength from both their ethnic inheritance and a sense of membership in a larger American community.

Senator **Matsunaga**. Thank you. Thank you very much, Kina'u, for your most analytical presentation.

Any questions?

Senator **Inouye**. I would just like to once again thank Kina'u for what she has done.

Mr. **Akaka**. Mr. Chairman, I also would join you and the committee in thanking Kina'u Kamali'i for a grand job and for the position she has taken; and for rallying the forces.

Mahalo.

Senator **Matsunaga**. Our next witness is Mr. Neil Levy, professor of law, Golden Gate University in San Francisco. We'd be happy to hear from you, Professor.

STATEMENT OF NEIL M. LEVY, PROFESSOR OF LAW, GOLDEN GATE UNIVERSITY, SAN FRANCISCO, CA

Mr. **Levy**. Thank you, Chairman Matsunaga, Senator Inouye, Congressman Akaka.

I'm Neil Levy, professor of law at Golden Gate University School of Law. Over the past 15 years, I've studied and worked with and thought about native people—Indians, Alaskan Natives, and native Hawaiians. I've authored an article on native Hawaiian land rights, which is being distributed to you now; and I authored a chapter in Felix Cohn's Revised Indian Law Treatise, the chapter on native Hawaiian Americans.

I'm here to urge that Congress adopt legislation that will allow compensation to native Hawaiian. I've reviewed in depth volume I of the Native Hawaiian Study Commission report. In spite of its presentation of much accurate data concerning the needs of native Hawaiians, it reaches a conclusion which in my view is totally erroneous. You've heard this week some technical criticism of the volume—of its methodolgy, or its historical mistakes. To me, however, its fundamental error is that asks the wrong question.

On page 17 of the report, it asks: Would the native Hawaiians have had any claims under present law for compensation from the United States for the loss of land or sovereignty?

The Commission then goes for 700 pages to prove to its own satisfaction that no such right exists under present law. That I agree with, and I think I can prove it much more simply than the report. Were there any such right under present law, native Hawaiians would be in court today asserting those rights. Obviously, the job for Congress is not to ask what exists under present law, but to question what laws should we have? Not as much to determine what changes to make to present law—must Congress pass a compensation bill? Certainly not. I know of no legal requirement, no legal principle which requires Congress to act. But it seems to me—this, I think, should be our focus, at this point—that the same principles of justice upon which Congress acted when it passed compensation bills for Indians, militate in favor of Congress now acting to lay the groundwork to provide just compensation for native Hawaiians.

There have not been many instances in our whole Nation's history when groups of native people have had a legal right to compensation which could be asserted without prior congressional action.

In 1863 until 1946, Congress passed 142 special jurisdictional acts to allow Indian claims. Why were all these special statutes necessary?

There were two reasons: first of all, to remove certain technical defenses the United States might have, such as the claim was stale—it was too old; or the United States had sovereign immunity. But I think there's a deeper purpose behind them. The United States wished to compensate for moral as well as legal wrongs.

When we look at the Indian Claims Commission Act of 1946, a broad-based bill which provided compensation for mainland Indians and Alaskan Natives. This purpose becomes even more clear. Certainly, the statute waived technical defense such as the statute of limitations. But its ethical base is much broader. Section 70(a)(5) states that action could be brought, and I will quote:

> Based upon fair and honorable dealings that are not recognized by any existing rules of law or equity.

Then Congressman Henry Jackson stated in the debate of this bill why such a clause was necessary. He stated:

> Let us pay our debts to the Indian tribes that sold us the land we live on. Let us make sure when the Indians have their day in court, they have an opportunity to present all their claims of every kind.

Let me then explain to you that I feel that the same four principles which guided Congress to compensate other native Americans should militate in favor of similar action on behalf of native Hawaiians.

First, is that we are a nation which believes in justice and believes in keeping its pride. Perhaps the very first major piece of legislation in our country's history, the Northwest Ordinance, stated:

> The utmost good faith shall always be observed toward the Indians. Their lands and property shall never be taken from them.

Our Nation's greatest legal scholar on the rights of native people, Felix Cohn, Associate Solicitor on Indian Affairs, stated it most eloquently. He stated, and I quote:

> Today we can say that from the Atlantic to the Pacific, our national public domain consists, with rare exceptions, of lands that we have bought from the Indians. We have missed the track or paid the wrong Indians for land they did not own and neglected the rightful owner. The keynote of our land policy is the recognition of Indian property rights. We have been human, not angelic. But when Congress has been fairly appraised of any deviation from the plighted word of the United States, it has generally been willing to submit to quick decisions the claims of any Indian tribe.

And I think this is where we are today. It has been willing to make whatever restitution the facts supported, for wrongs committed by blundering or unfaithful public servants.

As even volume I of the Study Commission points out, the United States deviated in a substantial degree from such fair and honorable dealings with native Hawaiians. In 1893, we allowed the U.S. military to be used in order to help American citizens overthrow a friendly government. That such actions had not been explicitly authorized by the President of the United States—it seems to me is not relevant. The United States, as Felix Cohn pointed out, bears responsibility for the unethical role which its agents play. In passing the Indian Claims Commission Act, the United States chose the path of rectifying past inequitable behavior. And I submit to you, that no less is required today for native Hawaiians.

There are some differences between the experience underwent by native Hawaiians, from the historical experiences of other native Americans. I suggest that these differences do not require results on compensations. Native Hawaiians are not ethnically Indians, but neither are Eskimos; and Eskimos are compensated under the Alaskan Claims Settlement Act. Hawaii is not on the mainland of the North American Continent, but neither are the Aleutian Islands, and Aleuts receive compensation. Sovereignty by another nation, the Kingdom of Hawaii, interceded between traditional life and annexation by the United States. But California was ruled by Mexico and the Republic of California before it joined in the United States. California Indians have received compensation.

Volume I, in part, claims that compensation should be denied because at the time of compensation, native Hawaiians were not "a single land-owning entity." But in the Northwest of the mainland, a number of tribes had individuated property rights; and yet this did not prevent compensation. Under the Indian Claims Commission Act, the United States went beyond relying on technical defenses. It chose to compensate for less than fair and honorable dealings. It should now choose to compensate the less than fair and honorable dealings toward native Hawaiians.

Thus, the first important reason to compensate is to live up to the ideals of justice which we have set for ourselves. But there are other reasons that I think militate in favor of such compensation.

The study commission documents with clarity the economic needs of native Hawaiians. native Hawaiians today are plagued by various economic, social, and educational hardships. A generous claims award could help undo the physical and psychological damages of Congress. The awarding of compensation can result in the advancement of native Hawaiian people. And this in turn will reduce to the nation of compensation, because we will thereby save the costs of proverty to the United States.

The third reason to compensate native Hawaiians is that such compensation can provide a degree of closure to the issue of compensating native people within the United States. The United States has already spent trillions of dollars compensating mainland native peoples. We are near the end of the process.

Excuse me, may I have about 2 more minutes, I can finish my statement.

Congress in 1946, when the country as still recovering from World War II, had the courage to provide a bill to allow compensation for hundreds of mainland Indian tribes. Can we shrink from that same obligation today, when we close this section of our history, by compensating native Hawaiians?

Finally, I think there is a fourth reason that militates in favor of compensation for native people. I would like to draw a parallel from the law of contracts. Much of contract law is devoted to compensating people who have suffered loss because of other people's breach. But there is another principle which underlies much of the law of restitution. A wrongdoer should not reap the profits of inappropriate behavior. The United States today currently owns hundreds of thousands of acres of Hawaii. It profits from that land. Should the United States be allowed to profit from land which it owns for which it has never paid? I suggest the answer is no.

In 1920, Congress passed the Hawaiian Homes Commission Act; it spoke of rehabilitating native Hawaiians. And a claims award will help in that rehabilitation. But I suggest to you that for other Americans, we have the task of continuing to rehabilitate the American contract. Americans will feel better if they know they can not rewrite history, but at least once then have been notified of that wrong, they have done their best to rectify it.

Thank you.

[Submittal by Mr. Levy follows:]

NATIVE HAWAIIAN LAND RIGHTS

NEIL M. LEVY

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Native Hawaiian Land Rights

Neil M. Levy†

Professor Levy traces the historical displacement of Native Hawaiians from their land and explores the problems of preserving the landholdings and cultural heritage of the Native Hawaiian community. He suggests that the problems require legislative solutions similar to those afforded to Native Americans and Alaskan Natives.

In less than 200 years of contact with Western civilization, Native Hawaiians, descendants of Polynesians who inhabited the Islands prior to 1778, have lost control of the great bulk of their homeland. Today they face a new period of crisis. This article focuses on the historical displacement of Native Hawaiians from their land—a displacement accomplished primarily through legal mechanisms rather than military actions—and then explores the current problems facing the Native Hawaiian community in its attempt to conserve and expand its presently limited landholdings. The article suggests that Native Hawaiians, as an indigenous people, occupy a unique status akin to that of Indians and Alaskan Natives, and that their problems accordingly require special legal solutions.

I

A HISTORY OF NATIVE HAWAIIAN LANDHOLDINGS UNTIL 1920

A. Traditional Land Tenure

When Captain Cook arrived in Hawaii in 1778, he found a complex land tenure system,[1] which has been compared to the feudal sys-

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[1] For detailed discussions of early Hawaiian land tenure, *see generally* J. CHINEN, THE GREAT MAHELE (1958) [hereinafter cited as THE GREAT MAHELE]; G. DAWS, SHOAL OF TIME (1968) [hereinafter cited as SHOAL OF TIME]; J. HOBBS, HAWAII—A PAGEANT OF THE SOIL (1935) [hereinafter cited as PAGEANT]; 1 R. KUYKENDALL, THE HAWAIIAN KINGDOM 1778-1854 (1938) [hereinafter cited as 1 HAWAIIAN KINGDOM]; A. LIND, AN ISLAND COMMUNITY (1938) [hereinafter cited as ISLAND COMMUNITY]; M. Kelly, Changes in Land Tenure in Hawaii, 1778-1850, June, 1956 (unpublished thesis in University of Hawaii Library) [hereinafter cited as Kelly].

tem of medieval Europe.[2] This system successfully sustained an extremely dense population[3] and provided surplus goods sufficient to support chiefs and priests and to replenish Cook's expedition.[4] Although there were larger administrative divisions,[5] the basic landholding unit was the *ahupuaa*, which ranged in size from 100 to 100,000 acres and usually had natural boundaries.[6] The ideal *ahupuaa* was an economically self-sufficient,[7] pie-shaped unit which ran from mountain tops down ridges to the sea. Most *ahupuaa* were in turn divided into *ili*, some of which were virtually independent while others were mere operating subdivisions of the *ahupuaa*. A hierarchical society paralleled this pattern of land division. At the top, a chief controlled each *ahupuaa*; land agents (*konohiki*) and subchiefs subordinate to the chief controlled smaller amounts of land; and at the bottom of the hierarchy common farmers worked land for the chief's personal benefit. Commoners also had plots for their own use and had certain gathering rights in the noncultivated lands of the *ahupuaa*.[8]

No concept similar to the fee simple absolute existed at this time and landholdings were considered revocable. On the death of a high chief, his successor was free to redistribute the land among the low chiefs and, when any chiefs died, the lands were not necessarily passed on to the decedent's heirs. Frequent warfare often brought new chiefs who could reassign the conquered land to their followers, rather than leave it with the conquered nobles. These changes in control usually affected neither the boundaries of the *ahupuaa* and the *ili*[9] nor the tenure, such as it was, of common farmers.[10] Although a commoner in Hawaii owed a work obligation to those higher in the structure, he was free to leave an *ahupuaa* if unhappy with his landlord. This situation, which distinguished pre-Cook land patterns from the European feudal system, may have been a major factor in ameliorating abuses by the chiefs, who were anxious to keep ample work forces on their lands.[11]

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[2] *See, e.g.*, PAGEANT, *supra* note 1, at 1.

[3] An estimated three hundred thousand people lived on 6,415 square miles. R. SCHMITT, DEMOGRAPHIC STATISTICS OF HAWAII: 1778-1965, at 10-11 (1968).

[4] *See* 1 HAWAIIAN KINGDOM, *supra* note 1, at 12-20.

[5] The island (*mokupuni*) was the primary division, followed by a geographic division called the *mokuaina*. Although this was not a political unit, modern Hawaiian judicial districts tend to follow old *mokuaina* boundaries. THE GREAT MAHELE, *supra* note 1, at 3.

[6] *Id.* at 1-3; *see* discussion of boundary setting practices in *In re* Boundaries of Pulehunui, 4 Hawaii 239 (1879).

[7] *But see* Kelly, *supra* note 1, at 32. Occasional trade fairs were held for goods not available in all localities.

[8] *See id.* at 20-26.

[9] *Id.* at 3. Today many large estates follow the boundaries of old *ahupuaa* and *ili kupono*.

[10] *See* PAGEANT, *supra* note 1, at 7.

[11] *See* Kelly, *supra* note 1, at 42.

B. Transitional Period 1778-1846

The arrival of Westerners completely altered socio-economic patterns as Hawaii became a major refreshment stop for European vessels sailing the Pacific and a major supplier of the sandalwood trade.[12] Partially through the use of European arms, Kamahameha I had expanded his rule by 1795 to all of Hawaii except the island of Kauai.[13] A proliferation of administrative levels and a rise in palace court life accompanied this unification. The king and his court were attracted to newly available European and Oriental goods, so that the Hawaiian economy had to supply a now enlarged aristocratic class with imported luxuries. While the economy thus turned from one primarily aimed at subsistence to one enmeshed in international trade, the commoners' condition worsened as Western diseases destroyed much of the population,[14] traditional notions of feudal responsibility were disrupted, and an onerous tax system was instituted.[15]

Land tenure patterns reflected and served this new economy. Kamehameha II, who acceded to the throne in 1819, considered it politically unwise to revoke the holdings of his predecessor's subchiefs. Foreign traders were anxious to codify this new stability, fearing that changes in landholdings might lead to civil wars and disruption of commerce.[illegible] When Kamehameha III acceded to the throne at the age of twelve, the council of chiefs, under the tutelage of an English frigate captain, extracted from the regent a formal policy, later characterized as the Law of 1825, which allowed chiefs to keep their lands upon a king's death.[16] At the same time, Westerners entered Hawaii's land usage patterns as foreign settlers were "given" lands by the king or chiefs in return for services or merely out of traditional Hawaiian generosity.[17] After overharvesting collapsed the sandalwood trade, Westerners with substantial capital accumulated in that trade began large-scale plantations on the Islands.[18]

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[12] ISLAND COMMUNITY, *supra* note 1, at 9-11.

[13] *See* 1 HAWAIIAN KINGDOM, *supra* note 1, at 29-60, for description of Kamehameha's conquest of other kingdoms within the Islands. The independence of Kauai was eroded over the next several decades.

[14] ISLAND COMMUNITY, *supra* note 1, at 94-99.

[15] *Id.* at 41.

[16] 1 HAWAIIAN KINGDOM, *supra* note 1, at 119-22.

[17] *See* Keelikolani v. Robinson, 2 Hawaii 514 (1862) for a description of one such land transfer in 1827. *See also* PAGEANT, *supra* note 1, at 17-19.

[18] Three Americans started the first venture in 1835 under the name of Ladd & Co., by obtaining a fifty-year lease, signed by both the king and his governor on Kauai, for a 1000-acre parcel on that island. The lease contained no terms concerning the rights of tenants but provided that Ladd & Co. might hire native laborers to work the land if it made adequate payments to the laborers, the governor and the king. The transaction thus combined the modern Western lease for a term of years with a partially

Hawaii's first written constitution, adopted in 1840, and the laws immediately enacted pursuant to it,[19] attempted to adjust land rights to the new relationships between Hawaiian chiefs and commoners and Hawaiians and Westerners. The constitution and the laws are frequently viewed as liberalizing forces[20] because they announced tenants' rights in land and lowered labor taxes. They also represent, however, a final attempt to preserve the non-mercantile land system and to reverse the tide of Hawaiians who were leaving their traditional homes for the booming towns of Honolulu and Lahaina. For example, one statute provided that, "No man living on a farm whose name is recorded by his landlord, shall without cause desert the land of his landlord. Nor shall the landlord causelessly dispossess his tenant."[21] Native Hawaiians who had already left the land were offered an opportunity to return by applying to a governor or the king for any uncultivated lands.[22]

The constitution also attempted to deal with two areas of conflict between Hawaiians and Westerners: attempts by chiefs to vest land rights in Westerners without the approval of the crown, and attempts by Westerners, who had received land rights from the king, to transfer those interests to other foreigners without the king's express permission. The traditional Hawaiian land system did not confront these issues, since landholdings before the law of 1825 had been revocable at the pleasure of the king. In disputes over land rights between the king and foreigners, the foreign community had distinct advantages.

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feudal labor arrangement. Lease agreement reproduced in part at 1 Hawaiian Kingdom, *supra* note 1, at 175.

[19] These documents frequently evidence a strong missionary flavor. *See, e.g.*, Law of Nov. 9, 1840, ch. 3, § 5, in Translation of the Constitution and Laws of the Hawaiian Islands Established in the Reign of Kamehameha III (1842) 32 [hereinafter cited as Translation]; (The Fundamental Law of Hawaii 18 (L. Thurston ed. 1904) [hereinafter cited as Thurston]). "As for the idler, let the industrious put him to shame, and sound his name from one end of the country to the other." Thurston at 18.

The statute book cited above is the first compilation in English of the constitution of 1840 and the laws enacted within the two years following its passage. Hawaii has reproduced its early statutes in other volumes. Since statute books for the Hawaiian Kingdom are now extremely rare, this article will give a parallel citation where applicable to Thurston and to 2 Revised Laws of Hawaii 1925 [hereinafter cited as Revised Laws 1925].

[20] *See, e.g.*, 1 Hawaiian Kingdom, *supra* note 1, at 167.

[21] Act of Nov. 9, 1840, ch. 3, § 5, in Translation at 33; (Thurston at 18-19). This attempt proved futile: "Neither the laws of 1839 nor of 1840 were found adequate to protect the inferior lords and tenants, for although the violators of law, of every rank, were liable to its penalty, yet it was so contrary to ancient usage, to execute the law on the powerful for the protection of the weak, that the latter often suffered, . . ." Principles Adopted by the Board of Commissioners to Quiet Land Titles, Act of Oct. 26, 1846, [1846] Hawaii Laws 87 (Revised Laws 1925 at 2127). For further discussion of the Principles see text accompanying note 36 *infra*.

[22] Act of Nov. 9, 1840, ch. 3, § 6, in Translation at 34 (Thurston at 19).

First, foreign gunboats frequently came to Hawaii to enforce the merchants' views.[23] Second, Westerners had assumed many of the most important positions and thus were able to influence government decisions.[24] Native Hawaiians had come to fear the foreigners' accumulation of land.[25] The chiefs realized that such holdings would increase the power exercised by foreigners and decrease their own ability to receive labor dues from commoners who became part of the Western plantation economy.

In attempting to delimit the Westerners' claims to land, the constitution of 1840 reaffirmed that the king could lose no land without his consent;[26] thus he could prevent alienation to foreigners. However, fearing a confrontation with Westerners, the king provided in the constitution that property already held by them would not be reclaimed by the crown.[27] In 1841, Kamehameha III again sought to forestall conflict with the foreign community by proclaiming a plan of accommodation allowing the Islands' governors to enter into fifty-year leases with the foreigners.[28] Neither the constitution nor the accommodation plan put to rest Western-Hawaiian land disputes. In 1843, partially in response to a lease dispute involving the British Consul, Richard Charlton, the British warship *Carysfort* entered Honolulu and its captain took over virtually all functions of government for five months.[29] The British government, upon learning of this action, repudiated it and ordered the *Carysfort* to leave Hawaii. To the Hawaiian Kingdom the lesson must have been clear: its independence was at the whim of great Western powers, whose nationals increasingly desired to own the lands of Hawaii.

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[23] In 1837, one prominent American merchant wrote:

> Property is much safer here than formerly—the visits of the American, English and French men-of-war during these sixteen months have established inviolability of property and persons, and the natives taught and made to fear the "laws of the Nations"; and that a sovereign and a government come under the ban of laws as well as subjects or individuals.

Letter from Henry A. Pierce to James Hunnewell, Aug. 6, 1837, in 1 Hawaiian Kingdom, *supra* note 1, at 153.

[24] *See* Kuykendall, *American Interests and American Influence in Hawaii in 1842*, 1930 Ann. Report of the Hawaiian Historical Soc'y 61 (1930).

[25] *See, e.g.*, petition from natives of Molokai and Maui to the King, July, 1845, objecting to the land being sold to Westerners, Legislative File Folder #2, Hawaii State Archives.

[26] The constitution of 1840 stated:

> Kamehameha I, was the founder of the kingdom, and to him belonged all the land from one end of the Islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I. was the head, and had the management of the landed property. Wherefore, there was not formerly, and is not now any person who could or can convey away the smallest portion of land without the consent of the one who had, or has the direction of the kingdom.

Constitution of 1840, in Translation at 11-13 (Thurston at 3).

[27] Preamble to constitution of 1840, in Translation at 10 (Thurston at 1). This preamble had been proclaimed by Kamehameha III in 1839 in virtually the same form as it appeared in the constitution and is frequently referred to as the Declaration of Rights.

[28] Royal Proclamation, May 31, 1841, in 1 Hawaiian Kingdom, *supra* note 1, at 275.

[29] *See generally* Shoal of Time, *supra* note 1, at 112-120.

C. *Era of the Mahele*

By 1845, the land tenure system could neither maintain itself in the face of a hostile foreign world nor accommodate itself to the wishes of that world. The government's response to these problems was a time honored one: appoint a commission. The Land Commission was charged to undertake "the investigation and final ascertainment or rejection of all claims of private individuals, whether natives or foreigners, to any landed property acquired anterior to the passage of this Act. . . ."[30] Its decisions, subject only to appeal to the Hawaii Supreme Court, were to be based on existing land law of the kingdom, including "native usages in regard to landed tenures."[31] Its ethnic composition illuminates the hold which non-Hawaiians had obtained on important government positions: of the Commission's five members, two were Hawaiians, one was half-Hawaiian, and two were Westerners.[32]

Under the traditional land system, especially after the constitution of 1840, holdings of the king, chiefs and commoners were intertwined and undivided. Lacking guidelines to undertake the division of those interests, the Commission at first did not act on the bulk of Hawaiian lands. Instead it focused its immediate attention on building lots in Honolulu and Lahaina since this land had already left the feudal production scheme.[33] Claimants proving rights in these lands received Land Commission Awards specifically stating that the Commission found "no native rights of occupancy in this plot."[34] Although the concept of fee simple was not part of the Hawaiian land system at that time, the Minister of Interior was authorized to issue fee patents based upon these awards.[35] The Commission was thus able to resolve a number of land disputes which had developed with the foreign community.

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[30] Act of Dec. 10, 1845, ch. 7, § 1, 2 [1847] Hawaii Laws 107, in REVISED LAWS 1925 at 2120 (Thurston at 137).

[31] *Id.* § 7 at 109, in REVISED LAWS 1925 at 2123 (Thurston at 138-39).

[32] 1 HAWAIIAN KINGDOM, *supra* note 1, at 280.

[33] See 2 [1847] Hawaii Laws 84, in REVISED LAWS 1925 at 2127 (Thurston at 143).

[34] For English language copies of early land Commission Awards and Royal Patents, see J. CHINEN, ORIGINAL LAND TITLES IN HAWAII 8-9 (1953).

[35] Act of Dec. 10, 1845, ch. 7, § 9 [1846] Hawaii Laws 109, in REVISED LAWS 1925 at 2123 (THURSTON at 139). *But see* 1 HAWAIIAN KINGDOM, *supra* note 1, at 282-84 for discussion of the limited government experiment in 1845 of selling small lots with fee simple title in the Makawao district of Maui and the Manoa valley on Oahu.

In 1846, the Commission adopted Principles,[36] ratified by the legislature,[37] to guide its work with land still under the traditional system. The Westerner-dominated Commission perceived its goal to be a total defeudalization and partition of undivided interests.[38] In discussing a fair and equitable division between king, chiefs, and tenants, the Principles stated:

> If the King be disposed voluntarily to yield to the tenant a portion of what practice has given to himself, he most assuredly has a right to do it; and should the King allow to the landlord one-third, to the tenant one-third and retain one-third himself, he, according to the uniform opinion of the witnesses, would injure no one unless himself; . . . According to this principle, a tract of land now in the hands of landlord and occupied by tenants, if all parts of it were equally valuable, might be divided into three equal parts . . . .[39]

The specifics for fulfilling the Principles were much debated until a formulation drafted by a Westerner, Justice William Lee, was accepted by the king and chiefs in Privy Council on December 18, 1847. The Lee formulation distinguished the king's private lands (those he held directly as noble) from lands he held as king and provided that he should retain all his private lands, with a right in his tenants "to a fee simple title to one-third of the lands possessed and cultivated by them" whenever the king or tenants desired.[40] The remaining land of the kingdom was to be divided into thirds: one-third to the Hawaiian government, another third to the chiefs and land agents, and the final third to the tenant farmers.[41] By paying the government, a chief or *konohiki* could also retain his proportional share of the one-third that was to go to the government.[42]

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[36] Principles Adopted by the Board of Commissioners to Quiet Land Titles in their Adjudication of Claims Presented to Them, Act of Oct. 26, 1846, 2 [1847] Hawaii Laws 81, in REVISED LAWS 1925 at 2124 (Thurston at 140).

[37] The ratification declared that "all claims for landed property in this kingdom shall be tested by those principles and according to them be confirmed or rejected." Resolution of the Legislative Council, 2 [1847] Hawaii Laws 94, in REVISED LAWS 1925 at 2137 (Thurston at 154).

[38] Act of Oct. 26, 1846, 2 [1847] Hawaii Laws 81, 92, in REVISED LAWS 1925 at 2134 (Thurston at 151).

[39] *Id.* at 83, in REVISED LAWS 1925 at 2126 (Thurston at 142-43).

[40] Rules adopted by the Privy Council, Dec. 18, 1847, § 4, 4 PRIVY COUNCIL RECORD (1847), *quoted in* Alexander, *A Brief History of Land Titles in the Hawaiian Kingdom*, in THRUM'S HAWAIIAN ALMANAC AND ANNUAL FOR 1891 at 112.

[41] *Id.* at § 2.

[42] *Id.* § 6 at 112-13. The commutation was often reduced or virtually eliminated by Privy Council action. *Cf.* 1 HAWAIIAN KINGDOM, *supra* note 1, at 288. Moreover, many *konohiki* simply failed to make the payment. In 1892, after much of the land had passed into non-Hawaiian hands, a statute was passed setting the commutation as one-third the value of the land at the time of the *Mahele*, without interest. Act of Dec. 16, 1892, ch. 68, § 1 [1892] Hawaii Laws 165, in REVISED LAWS 1925 at 2151.

The "Great *Mahele*"—or division—began January 27, 1848, and ended March 7. In the "*Mahele* Book," the interests of 245 chiefs and *konohiki* were divided from the king's private interest and the king quit-claimed his interest in specific *ahupuaa* and *ili* under each chief's control. The chiefs reciprocally quit-claimed to the king their interests in the balance of the divided lands, which then became the king's private land subject only to commoners' claims to one-third of that which they possessed and cultivated. Nevertheless, on March 8, 1848, the day after the last *mahele* between king and chiefs, the king "set apart forever to the chiefs and people of my Kingdom" approximately 1,500, 000 acres,[43] retaining for himself, his heirs and successors approximately 1,000,000 acres. The latter were subsequently referred to as Crown lands and the former as Government lands. The Land Commission then awarded the remaining 1,500,000 acres of the kingdom to the chiefs[44] though these awards stated specifically that they were "reserving the rights of the people."[45]

Total defeudalization of landholdings required the Commission to divide and parcel out the interests of the common people. An 1850 act[46] allowed each tenant to apply for his own *kuleana*. The *kuleana* could come from the Crown lands, from the Government lands created by the king, or from the other 1,500,000 acres of the kingdom, and could only include land which a tenant had "really cultivated"[47] plus a houselot of not more than a quarter of an acre.[48] The tenant received a fee title to this land if the claim was proved before the Land Commission and survey costs were paid.[49] The Commission, the legislature, and the king had previously promised the commoners an un-

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Even then, a statute had to be adopted in 1909 to provide for enforcement of the payments. Act of April 20, 1909, Act 90, § 1, [1909] Hawaii Laws 118.

[43] The division was affirmed by legislation. Act of June 7, 1848, [1848] Hawaii Laws 22, in REVISED LAWS 1925 at 2152.

[44] *See* ISLAND COMMUNITY, *supra* note 1, at 46; SHOAL OF TIME, *supra* note 1, at 127.

[45] An English language copy of such a patent can be found in J. CHINEN, ORIGINAL LAND TITLES IN HAWAII 9 (1953). Because of this reservation, a *kuleana* award made later in time was good against an earlier patent. *See* Kekiekie v. Dennis, 1 Hawaii 69 (1851).

[46] Act of Aug. 6, 1850, § 1 [1850] Hawaii Laws 202, in 2 REVISED LAWS 1925 at 2141. Actually, a joint resolution of the Legislature of Nov. 7, 1846 had similarly allowed the Minister of the Interior to divide out the interests of tenants. §§ 4-5 2 [1847] Hawaii Laws 71. However, little came of that power, probably because of insufficient government mechanisms to deal with it.

[47] Act of Dec. 21, 1849, § 6, [1850] Hawaii Laws 203, in REVISED LAWS 1925 at 2142.

[48] *Id.* § 5, in REVISED LAWS 1925 at 2142.

[49] Except for houselots in Honolulu, Lahaina and Hilo, *kuleana* recipients did not have to pay any commutation in order to receive their titles. *Id.* § 2, in REVISED LAWS 1925 at 2141-42.

divided one-third interest in most of Hawaii.[50] Although many historians have viewed the *Kuleana* Act as a beneficent one,[51] creating more than 8,000 yeoman holdings,[52] commoners received divided title to fewer than 30,000 acres, less than one percent of the land.[53]

Many reasons have been advanced for the scant quantity of land that commoners received. One suggestion is that most commoners lacked even the small capital needed for the required survey. Another is that commoners did not apply for *kuleana* because they feared reprisals by chiefs and land agents.[54] While these suggestions explain the number of commoner families receiving grants, the more cogent reason why commoners received so little *kuleana* land is that *kuleana* grants were severely limited by the "really cultivated" clause of the *Kuleana* Act. Furthermore, an act of the legislature barred all commoners' land claims not proved by 1854.[55] Thus, the great bulk of Hawaiian people was separated from the lands of Hawaii. Transferable title to almost two-thirds of Hawaii was concentrated in the hands of the king and the 245 recipients of *mahele* grants. The failure of the *kuleana* to provide an adequate land base for Native Hawaiians was not merely a function of *kuleana* size. Historically, commoners had only small fields to work for their own benefit, but they also were able to use other non-cultivated lands within the *ahupuaa* in return for labor dues. In 1847, the legislature had specifically confirmed the common people's right to grow crops for their own use and to pasture animals on unoccupied lands.[56] The *Kuleana* Act withdrew the right to grow crops and pasture and merely provided some gathering rights,[57] which meant little to a weak tenant surrounded by large fenced landholdings. Thus the foreigners heightened the hierarchical structure of Hawaiian society by removing its ameliorative qualities.

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[50] See text accompanying notes 39-41 *supra.*

[51] *See, e.g.*, Lydgate, *The Vanishing Kuleana*, THRUM'S HAWAIIAN ALMANAC AND ANNUAL FOR 1915 at 103.

[52] Recent research by Marion Kelly, historian, Bishop Museum, Honolulu, Hawaii, determined the number of recipients to be 8205. Letter from Marion Kelley to Neil Levy, February 18, 1975.

[53] 1 HAWAIIAN KINGDOM, *supra* note 1, at 294. Compare the effect of the General Allotment Act, ch. 119, 24 Stat. 388 (1887) on mainland Indian tribes. Under the guise of turning Indians into yeomen farmers, that act gave interests in tribal property to individual Indians and distributed the "excess" to non-Indians. *See* D. OTIS, THE DAWES ACT AND THE ALLOTMENT OF INDIAN LANDS (1973).

[54] *See, e.g.*, MORGAN, HAWAII—A CENTURY OF ECONOMIC CHANGE 1778-1876, at 137 (1948).

[55] An Act Relating to the Board of Commissioners to Quiet Land Titles, [1853] Hawaii Laws 26, in REVISED LAWS 1925 at 2145. Under Hawaiian case law, decisions of the Land Commission could not later be collaterally attacked. Kaai v. Mahuka, 5 Hawaii 354 (1885); Kukiiahu v. Gill, 1 Hawaii 90 (1851).

In the 1850's one might have argued that the *Kuleana* Act merely divided out a small portion of the commoners' interests under the Lee formulation and that the commoners should have been entitled to the remainder of those interests. If such a governmental taking argument was made before the Land Commission or the Supreme Court of Hawaii, it did not succeed. It must be recalled that the Hawaiian Constitution of 1840 had no clause requiring compensation for the taking of property. The closest provision to a due process clause was the preamble which stated that "nothing whatever shall be taken from any individual except by express provision of law." TRANSLATION at 10 (Thurston at 1).

The transformation to the modern Hawaiian land system was completed by creating formalized mechanisms for the sale of government lands and by allowing aliens to own land in Hawaii. Acts in 1846[58] authorized government land sales approved by the king and Privy Council and, by May 1, 1850, the government had sold over 27,000 acres under these laws.[59] Subsequently, the *Kuleana* Act directed that portions of government land be set aside in lots of one to fifty acres for purchase by natives who did not qualify for *kuleana*[60] and fixed a minimum price of 50 cents per acre.[61] Although these laws allowed common people who had not received *kuleana* the chance to own land, they did so at the price of establishing the principle that government land could be sold off. By 1852, thousands of acres of prime Hawaiian land were in the hands of foreigners. More importantly, Western property concepts were imposed on the legal structure and would facilitate the rapid, steady takeover of Hawaiian-owned lands during the next several decades. Moreover, the government's commitment to selling its remaining land put Westerners, with their access to capital, in a position to take Hawaiian land through the legal procedures they had established.[62] Western Imperialism had been accomplished without the usual bothersome wars and costly colonial administration.

Apologists for missionaries and other early Westerners might argue that the introduction of nineteenth-century Western property notions helped break a pernicious feudal system, or that the Western community in Hawaii could not have foreseen the harsh effects of defeudalization and the difficulties which a people face in turning from a feudal to a capitalist economy. A more realistic observer can conclude, however, that the foreigners were motivated by greed. Rev. Richard Armstrong wrote to his brother on January 15, 1850:

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[56] Resolution of November 7, 1846, §§ 1-2, 2 [1847] Hawaii Laws 70.

[57] Act of August 6, 1850, § 7, [1850] Hawaii Laws 203, in Revised Laws 1925 at 2142. Oni v. Meek, 2 Hawaii 87 (1858) interpreted the *Kuleana* Act as implicitly repealing all former gathering rights.

[58] Law of April 27, 1846, ch. 7, §§ 1-3, [1846] Hawaii Laws 99-103, in Revised Laws 1925 at 2190; Resolution of Nov. 7, 1846, § 6, 2 [1847] Hawaii Laws 71.

[59] Pageant, *supra* note 1, at 54.

[60] Act of August 6, 1850, § 4, [1850] Hawaii Laws 203, in Revised Laws 1925 at 2142.

[61] Act of July 11, 1851, [1851] Hawaii Laws 52-53.

[62] An 1847 amendment of the Land Commission law permitted foreigners to receive title to lands in which they had had an interest before 1845. Act of June 28, 1847, 2 [1847] Hawaii Laws 78, in Revised Laws 1925 at 2233. A limitation in that amendment, which provided that Western-held land could only be resold to Native Hawaiians, was negated by legislation in 1850: Act of July 10, 1850, [1850] Hawaii Laws 146-147, in Revised Laws 1925 at 2233-34. The 1850 legislation allowed any resident of Hawaii to own land regardless of citizenship. The sole disability against foreign property owners, concerning escheatment, was removed in 1854. Act of June 28, 1854, [1854] Hawaii Laws 15, in Revised Laws 1925 at 2235.

> The government has lately granted fee simple titles to all the natives, for the land they have lived on and occupied. This gives the final blow to the old feudal system and makes this a nation of freeholders. It is a point for which I have long contended and finally on my own motion it was carried by the King and Council. On their part it lost a great struggle as it cuts them off, at once, from the labour of all their tenants, and they must now work their lands by hired labour. *This will compel them to sell their waste lands of which they have an abundance.*[63]

D. The Plantation Economy

With a permanent population of fewer than two thousand, Westerners took over most of Hawaii's land in the next half-century[64] and manipulated the economy for their own profit.[65] They had already stripped the land of its only readily exploitable resource, sandalwood.[66] After the Reciprocity Treaty of 1876,[67] which allowed Hawaiian sugar to enter the United States duty-free, Western-owned sugar plantations dominated the Hawaiian economy.[68] That the local population did not participate in this economy proved no obstacle; laborers were imported from the Orient and Europe.[69] By the turn of the century Hawaiians were a minority in their own homeland.[70]

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[63] Letter on file in Library of Congress, Armstrong-Chapman papers; copy on file, Hawaiian Mission Children's Society, Honolulu, Hawaii (emphasis added).

[64] In 1897, the Western 9 percent of the population, owned 67 percent of the taxable lands, while Hawaiians and part-Hawaiians owned only 24 percent. ISLAND COMMUNITY, *supra* note 1, at 57.

[65] For detailed histories of Hawaii during this period *see generally* R. HOROWITZ, L. VARGHA, J. FINN, & J. CEASER, PUBLIC LAND POLICY IN HAWAII: AN HISTORICAL ANALYSIS (Legislative Reference Bureau Report No. 5, 1965) [hereinafter cited as HISTORICAL ANALYSIS]; 2 R. KUYKENDALL, THE HAWAIIAN KINGDOM 1854-74 (1953) [hereinafter cited as 2 HAWAIIAN KINGDOM]; 3 R. KUYKENDALL, THE HAWAIIAN KINGDOM 1874-93 (1967) [hereinafter cited as 3 HAWAIIAN KINGDOM]; J. MORGAN, HAWAII: A CENTURY OF ECONOMIC CHANGE (1948) [hereinafter cited as CENTURY OF ECONOMIC CHANGE].

[66] CENTURY OF ECONOMIC CHANGE, *supra* note 65, at 61-68.

[67] Treaty with Hawaiian Islands, January 30, 1875, [1875] 19 Stat. 625, T.S. No. 161; Act of July 18, 1876, ch. 2, [1876] Hawaii Laws 4-6.

[68] By 1898, 125,000 acres were in cane sugar. *See* 3 HAWAIIAN KINGDOM, *supra* note 65, at 62. This acreage was the best on the Islands and its economic importance was greater than its proportion of land.

[69] CENTURY OF ECONOMIC CHANGE, *supra* note 65, at 188-194.

[70] In 1896, Hawaiians and part-Hawaiians constituted about 35 percent of the population. A. LIND, HAWAII'S PEOPLE 27 (1967).

Plantations were made possible by legislation enabling Westerners to purchase large tracts of government land,[71] pursuant to which the kingdom sold over 600,000 acres by 1893 at an average price of 92 cents per acre.[72] Although Native Hawaiians made the largest number of purchases, the bulk of the acreage went to Westerners. For example, before 1864, more than 320,000 acres were sold to only 213 Westerners.[73] In the following year the entire island of Niihau, over 61,000 acres, was sold to one Western entrepreneur.[74] Westerners also accumulated Crown lands via leasehold arrangements despite the fact that the Crown lands had been made inalienable in 1865.[75] By 1890, 76 lessees controlled 752,431 acres of Crown and government land by leasing at an annual rate of pennies per acre.[76]

Some Westerners acquired large amounts of acreage for plantations by overreaching or actual fraud. In 1880, Claus Spreckels, the California sugar baron, purchased from a descendant of Kamehameha I all her rights in the Crown lands.[77] Although this claim had no legal value since Crown lands were inalienable, Spreckels persuaded the 1884 legislature to give him 24,000 acres of high quality sugar land in exchange for his asserted claim.[78]

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[71] Statutes cited notes 58 and 62 *supra*. Until the Act of September 25, 1876, [1876] Hawaii Laws 118-119, such sale did not have to be at auction.

[72] *See* HISTORICAL ANALYSIS, *supra* note 65, at 186.

[73] Compare the purchase during the same period of approximately 90,000 acres by 333 Native Hawaiians. Statistics compiled by the author from COMMISSIONER OF PUBLIC LANDS OF THE TERRITORY OF HAWAII, INDICES OF AWARDS (1929), containing entries of grantees and acreage for all Royal Hawaiian government land grants.

[74] COMMISSIONER OF PUBLIC LANDS OF THE TERRITORY OF HAWAII, INDICES OF AWARDS 10 (1929).

[75] Upon the death of Kamehameha IV in 1865, Queen Emma applied under the intestate succession laws for a one-half interest in the estate and a right of dower in the remaining half. Ruling against her, the Hawaiian Supreme Court declared that despite the clear intent of Kamehameha III during the *Mahele* to have the Crown lands treated as private property, they belonged to the possessor of the Crown, subject only to a dower right. *In re* Kamehameha IV, 2 Hawaii 715 (1864). This litigation led to legislation which affirmed the decision of the court and further declared that all land remaining with the Crown "shall be henceforth inalienable, and shall descend to the heirs and successors of the Hawaiian Crown forever." Act of January 3, 1865, § 3 [1864] Hawaii Laws 70, in REVISED LAWS 1925 at 2178. This act also substituted an income of $6,000 for the Queen's dower and provided for bonds to redeem existing mortgages.

[76] HISTORICAL ANALYSIS, *supra* note 65, at 137.

[77] SHOAL OF TIME, *supra* note 1, at 225.

[78] Act of July 21, 1882, ch. 10, [1882] Hawaii Laws, in REVISED LAWS 1925 at 2179.

Under a statute that authorized government land exchanges, Act of August 14, 1895, § 17, [1895] Hawaii Laws 56-57, Charles Gay exchanged slightly fewer than 300 acres on Oahu for 48,000 acres on Lanai. R. HOROWITZ, PUBLIC LAND POLICY IN HAWAII: LAND EXCHANGES (Legislative Reference Bureau Report No. 2, 1964) 14-15. McCandless v. Carter, 18 Hawaii 221 (1907) upheld this questionable transaction.

In 1865, Joseph H. Morrison measured the dimensions of an *ahupuaa* of almost 50,000 acres, reported to the Hawaiian owner that the *ahupuaa* was only 1,200 acres, and then purchased it for a mere $600. The court set aside the transaction, relying not only upon the disparity between the sales price and the true value, but also on the relationship of trust between the buyer and seller.[79] In other cases, however, courts upheld transactions where the evidence strongly suggested an illiterate seller sold property for far less than its true value, or was confused about the nature of the transaction.[80]

Intermarriage between Western men and the daughters of land-rich Hawaiians also resulted in the loss of Native Hawaiian control over land.[81] The courts facilitated this loss of land. For example, one decision voided an attempt by a Hawaiian woman to transfer land to her brother and thus out of the control of her Western husband.[82] The administration of the Bishop Estate illustrates another instance in which Native Hawaiians lost control of the land.[83] When Bernice Pauahi Bishop, the last descendant of Kamehameha I, died in 1884, her estate included more than 375,000 acres.[84] The bulk of her estate was bequeathed to a charitable trust, administered by five named Westerners, whose successors were to be appointed by a majority of the justices of the supreme court.[85] Thus, even if the charitable estate had been efficiently managed for the benefit of Native Hawaiians, as the testator intended, control of almost 10 percent of the land of Hawaii passed out of Hawaiian hands as a result of the disposition. As Rev. Armstrong had predicted,[86] the chiefs who had been accustomed to the feudal labor dues system were unable to manage cash plantations and many large estates were lost through debts and mortgage foreclosures.[87]

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[79] Kapaakea v. Morrison, 2 Hawaii 272 (1860); *see also* Ainini v. Kala, 6 Hawaii 16 (1869); Kapea v. Moehonua, 6 Hawaii 49 (1871).

[80] *See, e.g.*, Kanakanui v. Leslie, 7 Hawaii 223 (1888); Namomi v. Ah Nui, 5 Hawaii 441 (1885); Kapaukea v. Lawrence, 4 Hawaii 674 (1873).

[81] Although the descendants are obviously part-Hawaiian, subsequent marriages to Westerners have led to a present landholding class whose cultural identity differs from the bulk of landless Hawaiians.

[82] Mutch v. Holau, 5 Hawaii 316 (1885).

[83] For discussion of present problems of the Bishop Estate, see text accompanying notes 171-217 *infra*.

[84] This accumulation of land in the estate of one person occurred because of the scarcity of heirs in the Kamehameha line. *See* Midkiff, *The Kamehameha Schools and the Bishop Estate*, in THE KAMEHAMEHA SCHOOLS—75TH ANNIVERSARY LECTURES 163-64 (1965).

[85] Will of Bernice Pauahi Bishop, ¶ 14, Equity file No. 2048 (Hawaii Cir. Ct., 1st Cir., December 2, 1884). Cited in relevant part in Kekoa v. Supreme Court, 55 Hawaii 174, 516 P.2d 1239, 1241 (1973).

[86] See text accompanying note 63 *supra*.

[87] For account of an early mortgage granted by Native Hawaiians, *see, e.g.*, May v. Haalelea, 2 Hawaii 191 (1859).

As Westerners gained control over government lands and holdings of the Native Hawaiian aristocracy, the *kuleana* became easier to obtain and the majority of these minimal holdings were soon lost.[88] The *kuleana* owners were frequently harassed by the illegal diversion of water and by foraging cattle from large ranches.[89] Without the former concomitant rights to grow crops and pasture animals on unoccupied land in the rest of the *ahupuaa*,[90] the *kuleana* could not provide their owners with a subsistence living. The economic difficulties in maintaining them, plus the absence of restraints on alienation, frequently led to sales at nominal prices.[91] *Kuleana* which had been leased to Westerners were never returned[92] because natural landmarks disappeared when the *kuleana* became part of plantations.[93] *Kuleana* were lost to larger surrounding landholders by frequent invocation of the doctrine of adverse possession.[94]

E. The Republic and the Annexation

Westerners, having asserted economic dominance over the Islands by the 1880's, turned to the establishment of complete political control.[95] Influential Western growers formed the Hawaiian League in 1887, whose stated goals were to end corruption in the Hawaiian government and to reduce the monarch's power.[96] The group staged a coup d'etat on July 6, 1887, forcing the king to promulgate a new constitution to replace the constitution of 1864. The "Bayonet Constitution" substituted the power of Western landowners for that of the king.[97] The upper class of legislators, previously appointed by the king from the Native Hawaiian nobility,[98] was now to be elected by those who paid taxes,[99] from a field of candidates limited to wealthy landowners.[100] Americans and Europeans residing in Hawaii, who were literate in any Western language and met the taxpaying criteria, did not have to be citizens to vote,[101] while illiterate Hawaiians under the age of 47 were barred from voting.[102]

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[88] For discussion of the current problems of remaining *kuleana*, see text accompanying notes 145-70 *infra*.

[89] *See* discussion of the history of cattle on the Islands in Davis v. Green, 2 Hawaii 367 (1861). *See also* CENTURY OF ECONOMIC CHANGE, *supra* note 65, at 169.

[90] See text accompanying notes 56-57 *supra*.

[91] *Cf*. ISLAND COMMUNITY, *supra* note 1, at 47-52.

[92] *Id.*

[93] *See* Wise, *History of Land Ownership in Hawaii*, in ANCIENT HAWAIIAN CIVILIZATION 89-90 (1956).

[94] See text accompanying notes 160-70 *infra*.

[95] *See generally* S. STEVENS, AMERICAN EXPANSION IN HAWAII, 1842-1898 (1945) [hereinafter cited as AMERICAN EXPANSION]; M. TATE, THE UNITED STATES AND THE HAWAIIAN KINGDOM (1965) [hereinafter cited as U.S. AND THE HAWAIIAN KINGDOM].

[96] *See* 3 HAWAIIAN KINGDOM, *supra* note 65, at 347-49.

[97] For example, the absolute veto power of the monarch under the constitution of 1864, art. 31, was reduced to a limited veto power in the constitution of 1887, art. 48, in Thurston at 173, 187.

[98] Constitution of 1864, art. 45, in Thurston at 174.

The political victory of 1887 did not satisfy the desires of those Americans who wanted Hawaii annexed to the United States; and in the 1890's they formed the Annexation Club.[103] In 1893, when Queen Liliuokalani threatened to proclaim another constitution increasing the crown's power,[104] the American merchant community organized to overthrow the monarchy. Even after the Queen had clearly abandoned her plan,[105] the Americans continued their opposition under the name of the Committee of Public Safety. On January 16, 1893, John L. Stevens, the United States Minister in Hawaii and a long-term friend of the annexationists,[106] ordered marines to land in Honolulu. His excuse for invading was to protect American citizens and property.[107] The insurrectionists proclaimed a provisional government which Stevens recognized even before the Queen's chief lines of defense had surrendered. The Queen realized that her forces could not defeat the armed merchants and the United States Marines. In order to prevent futile bloodshed, she relinquished her governmental authority. The reaction on the mainland against United States military involvement in the revolution temporarily prevented the annexation which the merchant revolutionaries had planned.[108] The provisional government therefore established the Republic of Hawaii, which lasted until annexation in 1898.

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[99] Constitution of 1887, art. 59, in Thurston at 189.

[100] Constitution of 1887, art. 56, in Thurston at 188.

[101] Constitution of 1887, art. 59, in Thurston at 189.

[102] Constitution of 1887, art. 62, in Thurston at 190.

[103] AMERICAN EXPANSION, *supra* note 95, at 206-08.

[104] *See* U.S. AND THE HAWAIIAN KINGDOM, *supra* note 95, at 155-91.

[105] *Id.* at 173.

[106] AMERICAN EXPANSION, *supra* note 95, at 187.

[107] *See* U.S. AND THE HAWAIIAN KINGDOM, *supra* note 95, at 176.

[108] For example, President Cleveland, in refusing to submit a treaty of annexation to the Senate in 1893, pointed to the unethical role the United States had played.

> But for the notorious predilections of the United States Minister for Annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed.
>
> But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.
>
> But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the

The constitution of the Republic expropriated[109] the Crown lands, without compensation to the monarch,[110] and made them available to Westerners for purchase. Although leaving *Mahele* lands to the descendants of lesser chiefs and their transferees,[111] the Western minority had secured control over another vast part of Hawaii. The Land Act of 1895[112] provided for the disposition of some former Crown lands as homesteads.[113] Only citizens could apply for homesteads[114] and the exclusion of most Orientals from citizenship[115] limited homesteading to Hawaiians and Westerners.[116] The portion of the Act most suited to Native Hawaiians provided for 999-year leases of small acreage at no cost.[117] The leases, however, were inalienable and could not be de-

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> committee would not have proclaimed the provisional government from the steps of the Government building.

President's Message Relating to the Hawaiian Islands, H.R. Exec. Doc. No. 47, 53d Cong., 2d Sess. XIII (1893).

[109] *See* constitution of 1894, art. 95, [1895] Hawaii Laws 118, in Thurston at 237.

[110] Queen Liliuokalani brought suit against the United States for compensation, but this claim was denied. Liliuokalani v. United States, 45 Ct. Cls. 418 (1910).

[111] King Kamehameha III had separated his private lands from those of the government to safeguard them from Western takeover. In debate in the Privy Council, June 6, 1848, G.P. Judd had stated that it was necessary for the King to divide his private lands from the lands of the government because, "If no explanation of this kind is made, it will mix matters later on, and some of the foreigners will come later on and say they have an interest in the lands too." Debates of the Privy Council in 1848 at 42, June 6, 1848, on file in Hawaii State Archives.

[112] Act of August 14, 1895, Act 26, [1895] Hawaii Laws Spec. Sess. 49-83.

[113] Homesteading had been previously provided for by Act of August 29, 1884, ch. 45, [1884] Hawaii Laws 86, in Revised Laws 1925 at 2200. However, only 527 homesteads were taken out under this previous act and subsequent amendments, and of those only 337 were patented. House Comm. on the Territories Government for the Territory of Hawaii, H.R. Rep. No. 305, 56th Cong., 1st Sess. 65 (1900). The 1895 Land Act provided for continued auction sales of land, but limited the size of parcels to 1000 acres. Act of August 14, 1895, Act 26, § 17, [1895] Hawaii Laws 56.

[114] Act of August 14, 1895, Act 26, § 31 [1895] Hawaii Laws Spec. Sess. 62.

[115] Constitution of 1894, art. 17-18, [1895] Hawaii Laws 79, in Thurston at 205-206. The constitution provided citizenship for only those Orientals born or naturalized in the Republic of Hawaii. The effect of this naturalization requirement was to exclude most Orientals from homesteading eligibility.

[116] The Land Act was conceived by plantation owners as a means to attract white labor and to prevent an Oriental takeover by the Chinese and Japanese plantation workers they had imported. *See* essays by Hawaiian President Sanford B. Dole in 2 Hawaiian Kingdom, *supra* note 95, at 192. Dole wrote, "The problem of population is only to be worked out through far more comprehensive efforts, which shall aim to bring settlers and citizens rather than convicts and coolies . . . ."

[117] Act of August 14, 1895, Act 26, §§ 28-55, [1895] Hawaii Laws Spec. Sess. 61. The Land Act of 1895 also provided a right of purchase lease designed for impoverished potential agricultural entrepeneurs (*id.* §§ 59-64 at 75) and a cash freehold for those who had capital (*id.* §§ 65-70 at 78). The Commissioners of Public Land also sold land for cash plus credit (*id.* § 17 at 56) and thus fashioned what have frequently been referred to as "Special Homestead Agreements," primarily with Westerners.

vised, but would descend to statutory heirs.[118] An analysis of homesteading in the first years after the Land Act indicates that Native Hawaiians were not the main beneficiaries.[119]

Changing attitudes in the United States concerning imperialism permitted Hawaiian annexation in 1898,[120] but annexation did not immediately affect the homesteading program. Although the joint Newlands Resolution of Annexation ceded all public lands of the Republic of Hawaii to the United States,[121] it affirmed the validity of "municipal legislation of the Hawaiian Islands"[122] and the public land laws of the United States were made inapplicable to Hawaii.[123] Ironically, a 1910 amendment to the Organic Act,[124] which was designed to facilitate the homesteading programs, became the precursor of their demise. It directed the Territory to open land in a given locality when 25 or more qualified homesteaders applied for that land.[125] For the sugar interests, this amendment could not have come at a less opportune time. A large number of long-term leases on crown lands were due to expire during the 1920's and 1930's, and thus could become open to homesteading under the 1910 amendment.[126] For example, a prime sugar tract previously leased to the Waiakea Mill Company near Hilo had been opened to homesteading in 1918.[127] Although the Mill Company leased back virtually all the land within several years, the industry undoubtedly wished to avoid the costs of regaining homestead land.

An entirely different problem provided the rationale for legislation to protect the sugar industry from homesteading. During this period, racial consciousness was rising among Hawaiians and part-Hawaiians, and the Hawaiian leadership perceived that the Hawaiians were a dying race.[128] The Hawaiian Protective Association suggested that Native Hawaiians be "rehabilitated" by removing them from the influences of city tenements and returning them to the land.[129] The result was the Hawaiian Homes Commission Act of 1920[130] which, by its terms, purported to mitigate the perceived racial problem. Although the act may be cited as a humanitarian effort for the surviving descendants of an indigenous people, it was enacted by sugar barons who would not tolerate accelerated homesteading.[131] A deal was struck: some second-class lands would be put aside for Native Hawaiians under the new program and, in return, all cultivated sugar lands would be withdrawn from homesteading.[132]

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[118] Act of August 14, 1895, Act 26, § 43, [1895] Hawaii Laws Spec. Sess. 67. Under Public Law No. 746 (1950) these 999-year leases can be converted to fee at the holder's option. Act of Sept. 1, 1950, ch. 833, 64 Stat. 572, *as amended*, Act of Aug. 23, 1954, ch. 824, 68 Stat. 764.

[119] HISTORICAL ANALYSIS, *supra* note 95, at 11, 14.

Although homesteading continued into the twentieth century, the initial benefits to Hawaiians were ultimately lost. By 1951, fewer than 10 percent of the homestead leases remained in Native Hawaiian hands. G. LUTER, REPORT ON HOMESTEADING IN HAWAII 1839-1961 (Jan. 3, 1961) at 15, on file Hawaiian State Dept. of Land and Natural Resources. The lack of capital to fulfill the development condition of the leases and the ban on testamentary disposition were partly responsible for these relinquishments.

[120] AMERICAN EXPANSION, *supra* note 65, at 293-99.

[121] Joint Resolution of July 7, 1898, No. 55, 30 Stat. 750 (1898).

[122] *Id.* § 1.

[123] The Newlands Resolution had transferred fee title to the United States but the Territorial Government interpreted the Resolution as allowing continued disposal of public lands. The Organic Act specifically validated those problematic transactions, but it did not significantly affect homesteading. Act of April 30, 1900, ch. 339, §§ 73, 91, 31 Stat. 141.

[124] Act of May 27, 1910, ch. 258, § 5, 36 Stat. 443.

[125] *Id.* 36 Stat. 443, 446.

[126] *See generally* REPORT OF THE WAIAKEA HOMESTEAD COMMISSION (1926).

[127] *Id.* at 12.

Although the Commission was authorized to lease parcels to Native Hawaiians for 99 years at nominal rates,[133] the land made available was arid and of marginal agricultural value.[134] Hawaiians, in many instances several generations removed from agricultural life, were thus to rehabilitate themselves on land that experienced farmers would not touch.[135] Furthermore, homesteaders' land rights were limited: they could not sublet, transfer or mortgage the land to non-Hawaiians and they even needed Commission approval to transfer to Hawaiians.[136] Finally, the Act provided little financial assistance to Native Hawaiians desiring to erect homes and begin farming operations.[137]

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[128] *Cf.* A. LIND, HAWAII'S PEOPLE 17-18 (1955). Hindsight demonstrates that by 1920, the population of part-Hawaiians was increasing faster than the population of pure Hawaiians was decreasing. *Id.*

[129] M. Vause, Hawaiian Homes Commission Act, 1962 (unpublished thesis in University of Hawaii Library) 119.

[130] Act of July 9, 1921, ch. 42, 42 Stat. 108.

[131] *See generally* M. Vause, Hawaiian Homes Commission Act, 1962 (unpublished thesis in University of Hawaii Library).

[132] Withdrawal was authorized by Congress in the Act of July 9, 1921, ch. 42, §§ 203, 212, 42 Stat. 109, 112.

[133] *Id.* §§ 207(a), 208(2), 42 Stat. 109-11.

[134] Approximately 200,000 acres of public land were "made available" to the Hawaiian Homes Commission, which was a branch of the territorial government. Act of July 9, 1921, ch. 42, § 203, 42 Stat. 109. *See* text accompanying notes 218-52 *infra* for discussion of current problems of the Hawaiian Homes program.

[135] At that time, Governor McCarthy of Hawaii stated that if better lands were made available to Hawaiians, "the main object of the measure would be defeated as the Hawaiians would not work the land themselves but would have the work done by Japanese." Letter from Governor McCarthy to Secretary of the Interior Payne, June 30, 1920, in M. Vause, Hawaiian Homes Commission Act, 1962 (unpublished thesis in University of Hawaii Library) 117.

[136] Act of July 9, 1921, ch. 42, § 208(5), 42 Stat. 111.

[137] The Commission could lend prospective homesteaders up to $3,000. *Id.* §§ 214-15, 42 Stat. 111, 112.

In return, the Organic Act was amended to provide that non-homestead leases of public land would be for 15 years and that those leases could not be withdrawn to meet new demands for homestead leases.[138] Since no one could outbid the sugar interests for these leases, the industry obtained the use of the best lands in Hawaii. In fact, the sugar interests had bought virtually permanent use of government-owned sugar lands. Homesteading, except by Native Hawaiians under the Hawaiian Homes program, came to an end.[139] Poorer Caucasians and Hawaiian-born Orientals, who as United States citizens would have been eligible for homesteading, were denied access to public lands since only persons possessing "not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778"[140] were eligible under the Act.

II

PRESENT LAND PROBLEMS OF NATIVE HAWAIIANS

Almost 20 percent of Hawaii's population has some Native Hawaiian ancestry.[141] Great variation in wealth and degree of assimilation exists among Native Hawaiians, but generally that community is one of the poorest ethnic groups within the State today.[142] As real estate values in Hawaii rise, the number of geographic areas in which Native Hawaiians are able to purchase land or can afford to live decreases. Since Native Hawaiian culture has been tied to the land,[143] a land base is necessary for those Hawaiians who choose a traditional way of life. In addition, sufficient urban homeland must be assured so that economic necessity will not force Native Hawaiians to leave the Islands that form the basis of their cultural identity.[144]

In exploring possible methods to preserve and increase the land base of Native Hawaiians, this section will focus on the problems faced by Native Hawaiian *kuleana* holders: these problems are representative of those confronting other Native Hawaiian owners of small acreage fee interests. The section will then examine the Bishop Estate and the Hawaiian Homes program, the two most important potential land bases for Native Hawaiian utilization. Finally, it will analyze the current land reparation claim of Native Hawaiians.

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[138] *Compare* Act of April 2, 1908, ch. 124, 35 Stat. 56 *with* Act of July 9, 1921, ch. 42, § 304, 42 Stat. 117.

[139] From 1921 to 1946 only one tract of land was opened for general homesteading. HAWAII (TERRITORY) LAND LAWS REVISION COMMISSION, FINAL REPORT 44 (1946).

[140] Act of July 9, 1921, ch. 42, § 201(a)(7), 42 Stat. 108.

[141] *See* T. FISHER, HAWAII: GROWING PAINS IN PARADISE 12 (1973).

[142] *See generally* D. Tuttle, Hawaii Voting Behavior: A Guide to Estimated Social and Economic Characteristics, 1972 (unpublished thesis in University of Hawaii Library).

[143] *See generally* Handy, Handy & Pukui, *Native Planters in Old Hawaii*, in BERNICE P. BISHOP MUSEUM BULL. NO. 233.

[144] Today most Native Hawaiians live in or near Honolulu. STATE OF HAWAII, THE STATE OF HAWAII DATA BOOK, A STATISTICAL ABSTRACT 8 (1974).

A. Protection of Kuleana Rights

Despite the loss of many *kuleana*,[145] a significant number are still held by Native Hawaiians, particularly in rural areas such as East Molokai. Inherited *kuleana* constitute an important source of land held in fee by impoverished Native Hawaiians.[146] These plots, and the gathering rights they confer,[147] have provided adequate homesites for nuclear or extended Hawaiian families. However, three major legal obstacles bar full use of many *kuleana*.

1. Fractionated Ownership

A *kuleana* that one person received in the 1850's may now be owned by dozens of individuals if, in the intervening generations, the property passed by intestate succession.[148] Although each joint owner has a legal right to enter and use the land,[149] no one has much incentive to improve the land or pay taxes[150] if title is so clouded that ownership is perceived as only temporary. Even if estate counseling were feasible and effective for the future, legal assistance would be necessary to untangle those *kuleana* interests which are already fractionated.

If the number of joint owners is relatively small, there are three possible remedies. First, one joint owner can buy out the others. Second, the *kuleana* can be partitioned and each joint owner given title to a portion of the land.[151] Finally, if joint owners prefer to retain undivided ownership, title can be assigned to a mutually-owned corporation, trust, or partnership with the power to assure payment of taxes and to enforce agreed-upon land use patterns.

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[145] Several studies indicate how few *kuleana* were retained by Native Hawaiians. One estimate is that no more than one-third of the 937 *kuleana* on Kauai were securely held by Hawaiians in 1915. J. Lydgate, *The Vanishing Kuleana*, in THRUM'S HAWAIIAN ALMANAC AND ANNUAL FOR 1915 at 109. Although the percentage was likely to have been greater on the outer islands, a recent survey indicated that in densely populated Oahu less than 6.6 percent of the *kuleana* were still in Hawaiian hands as of 1936. ISLAND COMMUNITY, *supra* note 1, at 49.

[146] Interview with Fred Bicoy, West Molokai Community Advisor, Office of Economic Opportunity, in East Molokai, July 27-29, 1973.

[147] The *ahupuaa* historically ran from the mountains to the sea, with gathering rights for residents extending throughout this area. Today, lawful occupants of *kuleana* retain these rights. They may take firewood, house timber, aho cord, thatch and ki leaf for their own use. HAWAII REV. STATS. § 7-1 (1968).

[148] As with mainland Indians, the imposition of a foreign inheritance scheme has led to ownership patterns neither traditional nor typical of Western landholding. *See* Comment, *Too Little Land, Too Many Heirs—The Indian Heirship Problem*, 46 WASH. L. REV. 709 (1971).

[149] *See* Moranho v. De Aguiar, 25 Hawaii 267, *modified*, 25 Hawaii 271 (1920); Lui v. Kaleikini, 10 Hawaii 391 (1896).

[150] The nonpayment of taxes is a recurrent cause of loss of *kuleana*. Interview with Fred Bicoy, East Molokai Community Adviser, Office of Economic Opportunity, in East Molokai, July 28, 1973.

The owners of a *kuleana*, however, may be so numerous as to render the latter two solutions infeasible. Effective use of the land may require one or more of the joint owners to purchase the interests of others. The risk inherent in this approach is that impoverished Native Hawaiians may lose their only access to land ownership as they are bought out by more financially able Hawaiians. Only infusion of money from government or charitable sources will allow financially needy joint owners to undertake acquisition. Perhaps if *kuleana* ownership is viewed as a base of self-support for people who might otherwise need continual financial assistance, public funding is politically possible.

2. *Inadequate Access*

Since large plantations and developments surround *kuleana*, many roads leading to them are indirect or in such poor condition as to render them impassable to modern transportation. Legal tools already exist to remedy this problem: the doctrine of easements by necessity, for example, has been consistently recognized by Hawaiian courts.[152] In applying this doctrine, the courts have not required prior ownership by a single person of both the servient and dominant estates,[153] nor, if the property is landlocked, have they required that the right-of-way be absolutely necessary.[154] The easement must be "reasonably" necessary; that is, other access must be either difficult or expensive to use.[155] Thus, convenient right-of-way presently used by a *kuleana* holder can usually be upheld even if the user cannot establish a prescriptive easement.

In addition, statutory sanction exists for rights-of-way to *kuleana*. Hawaiian law still retains the 1850 statute establishing *kuleana*, which declares that, "the people shall have . . . the right of way. . . . The roads shall be free to all, on all lands granted in fee simple."[156] This provision has been used as historical evidence to strengthen the theory of right-of-way by necessity.[157] It should also be used as an independent ground to establish access to land. There is precedent using ancient Hawaiian custom and usage to determine modern property rights. For example, the court has considered the purpose of laws enacted at the time of the Great *Mahele* in order to resolve a current water rights issue.[158] Since the problems of the *kuleana* also stems from the Great *Mahele*, a similar approach should be taken to preserve access.[159]

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[151] HAWAII REV. STATS. § 668 (1968) provides procedures for partition of real estate. Of course, compliance with zoning laws concerning subdivision of property would also be necessary.

[152] *See* Palama v. Sheehan, 50 Hawaii 298, 440 P.2d 95 (1968).

[153] Henry v. Ahlo, 9 Hawaii 490 (1894).

[154] Palama v. Sheehan, 50 Hawaii 298, 301, 440 P.2d 95, 98 (1968); Enos v. Wa Sing, 4 Hawaii 457 (1882).

[155] *See, e.g.*, Kalaukoa v. Keawe, 9 Hawaii 191, 193 (1893).

[156] HAWAII REV. STATS. § 7-1 (1968) (originally enacted as Act of August 6, 1850, § 7, [1850] Hawaii Laws 202); REVISED LAWS 1925 at 2142.

3. *Adverse Possession*

Fractionated ownership and lack of access often lead to disuse of *kuleana* plots which, in turn may lead to permanent loss of possessory rights through adverse possession. The doctrine of adverse possession denies to the legal owner of land the ability to use the courts to eject one who has occupied that land for a statutory period[160] in an open, hostile, notorious, and exclusive manner.[161] Doctrines developed in other jurisdictions that would stay this trend, and limit the application of adverse possession, have not been adopted in Hawaii.[162] Rather, adverse possession has been used primarily by large landholders to absorb the enclosed *kuleana* of Native Hawaiians.[163] Although a large landholder cannot gain title by merely showing non-use of the *kuleana*,[164] it may be relatively easy to cultivate the lands of an enclosed *kuleana* and to begin occupying the land through adverse possession. Reduction of adverse possession claims to paper title is then a simple matter[165], and opens the door to development. Native Hawaiians have been less able to use the doctrine to secure land for themselves. For example, if a native tenant remained on cultivated lands after 1850, but never applied for a *kuleana*, his continued possession was deemed permissive rather than adverse.[166] Thus it became practically impossible for a commoner to adversely possess land owned by a *konohiki*.

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[157] Palama v. Sheehan, 50 Hawaii 298, 300, 440 P.2d 95, 97 (1968).

[158] McBryde Sugar Co. v. Robinson, 54 Hawaii 174, 504 P.2d 1330, *aff'd on rehearing*, 55 Haw. 260, 517 P.2d 26 (1973), *appeal dismissed*, 417 U.S. 962 (1974).

[159] Traditional rights of *kuleana* owners might also be used to control resource-destructive aspects of development and to extend rights-of-way throughout the *ahupuaa* to reach the mountains and beaches. It could be argued that since the people have rights to gather resources within the *ahupuaa*, any future development that would destroy these natural resources must be halted. See note 147 *supra*.

As a modest note, the legislature passed a public access statute, HAWAII REV. STATS. § 46-6.5(a) (1968). It provides that all developers, as a condition precedent to final approval of a subdivision where public access is not already established, must dedicate land for public access from public highways to the coastal shoreline, mountain trails, and existing facilities for hiking, hunting, fruit-picking, ti-leaf sliding, and other recreational purposes. *See* Comment, *Hawaiian Beach Access: A Customary Right*, 26 HASTINGS L.J. 823 (1975).

[160] HAWAII REV. STATS. §§ 657-31, 669-1 (1968). The statute of limitations was originally 20 years. Act of July 18, 1870, ch. 22, § 1, [1870] Hawaii Laws 28. This period was reduced to 10 years in 1898. Act of April 22, 1898, Act 19, § 1, [1898] Hawaii Laws 22. See note 165 *infra* for the 1973 amendment which changed the period back to 20 years.

[161] For example, Hawaiian courts have not been strict in demanding that the adverse possessor enter under claim of title. *See* Deponte v. Ulupalakua Ranch, Ltd., 47 Hawaii 17, 395 P.2d 273 (1964); Lalakea v. Hawaiian Irrigation Co., 36 Hawaii 692 (1944). Nor have they always required the adverse possessor faithfully to pay taxes. *See* Gomes v. Upchurch, 50 Hawaii 125, 432 P.2d 890 (1967); Deponte v. Ulupalakua Ranch, Ltd., 48 Hawaii 17, 395 P.2d 273 (1964).

[162] Thomas v. State, 55 Hawaii 30, 514 P.2d 572 (1973); Oahu Ry. and Land Co. v. Kaili, 22 Hawaii 673 (1915); Booth v. Beckley, 11 Hawaii 518 (1898).

[163] *See* Town & Yuen, *Public Access to Beaches in Hawaii, "A Social Necessity,"* 10 HAWAII B.J. 5, 21 (1973).

There are two approaches for *kuleana* owners who want to avoid this loss. One alternative, suggested by Chief Justice William Richardson of the Hawaii Supreme Court, is that more Native Hawaiians register their lands to prevent them from being taken by adverse possession.[167] A second approach is Native Hawaiian pressure to reform the adverse possession laws. In 1973, the statutory period for adverse possession was changed from 10 to 20 years,[168] thus allowing land owners a longer period in which to evict a potential adverse possessor. The legislature also passed a bill which would have required an adverse claimant to have entered the land in good faith.[169] Although this bill would merely have prevented successful claims by those who had *not* acted in good faith, it was vetoed by the governor.[170]

B. *The Bishop Estate*

The Bishop Estate[171] is the largest and most important of Hawaii's landed charitable estates.[172] Its holdings on all major Islands except

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[164] Akowai v. Lupong, 4 Hawaii 259 (1880).

[165] Title can be established pursuant to the Land Court Registration Act, HAWAII REV. STATS. § 501 (1968), Hawaii's enactment of the Torrens System. That Act has had very limited use because of its complex procedures; an application must include a boundary survey and a complete abstract of title. Expense, in fact, limits use of the Act to wealthy landowners and large developers. Most landholders rely instead on actions to quiet title, which are simple to bring, especially when unopposed. HAWAII REV. STATS. § 669 (1968). *See* D. Dauthet, Clearing Land Titles in Hawaii, Sept. 23, 1974 (unpublished paper).

[166] *See, e.g.*, Dowsett v. Maukeala, 10 Hawaii 166 (1895).

[167] Hawaii Advertiser, Feb. 9, 1974, at A-2, col. 1.

[168] HAWAII REV. STATS. § 657-31 (Supp. 1974).

[169] H.B. 15, S.B. 879, Reg. Sess. (1973); legislative passage, April 11, 1973.

[170] Governor's veto, June 1, 1973. SEVENTH LEGISLATURE OF THE STATE OF HAWAII, FINAL STATUS OF BILLS AND RESOLUTIONS 202 (1974).

[171] See text accompanying notes 83-85 *supra* for discussion of the formation of the Bishop Estate.

[172] Other major landed charitable estates include Queen's Hospital, Queen Liliuokalani Trust, and The Bernice P. Bishop Museum. *See* R. HOROWITZ, PUBLIC LAND POLICY IN HAWAII: MAJOR LANDOWNERS 17 (Legislative Reference Bureau Report No. 3, 1967) [hereinafter cited as MAJOR LANDOWNERS].

Lanai comprise nine percent of the state.[173] The will of Princess Bernice Pauahi Bishop established the Estate and named five Westerners as trustees; their successors were to be named by the members of the Hawaii Supreme Court.[174] The trustees were authorized "to sell and dispose of any lands of the . . . estate and to exchange lands and otherwise dispose of the same" to further the trust purposes.[175] Approximately 90 percent of the Estate's land is leased for long terms for residential, agricultural, commercial, and industrial purposes.[176] But the Estate has failed to put its resources to effective use. Although the Estate's total landholdings are valued conservatively at more than $500, 000,000,[177] its annual income is under $9,000,000,[178] or less than two percent of its capital. Such a minimal return raises the question of whether the trustees are fulfilling their statutory obligation to manage the Estate in the "manner in which men of ordinary prudence, discretion, and judgment would act in the management of their own affairs."[179]

More importantly, the low return has prevented the Estate from realizing its benevolent aims. Princess Bishop's will directed the trustees to hold the corpus upon the following trusts: to maintain two schools, and to support orphans and other indigents, "giving the preference to Hawaiians of pure or part aboriginal blood. . . ."[180] Despite this broad directive to support and educate indigent Native Hawaiians, the Estate has limited its activities almost exclusively to maintaining the Kamehameha Schools.[181] Moreover, the Kamehameha Schools receive only 85 percent of their expenses from the Estate; the balance is collected in tuition from students—all of whom are part-Hawaiian.[182]

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[173] *Id.* at 17, 44.

[174] Will of Princess Bernice Pauahi Bishop, para. 14, Equity file No. 2048 (Hawaii Cir. Ct., 1st Cir. Dec. 2, 1884).

For the decision that Justices, when appointing Trustees, are acting as individuals rather than as members of the judiciary, *see* Kekoa v. Supreme Court, 59 Hawaii 174, 516 P.2d 1239 (1973); *In re* Bishop Estate, 23 Hawaii 575 (1917), *aff'd*, 250 F. 145 (9th Cir. 1918).

[175] Will of Princess Bernice Pauahi Bishop, para. 13, Equity file No. 2048 (Hawaii Cir. Ct., 1st Cir. Dec. 2, 1884). Codicil No. 1, para. 17 further states: "I give unto the trustees named in my will the most ample power to sell and dispose of any lands or other portions of my estate . . . but [direct them] to continue and manage the same, unless in their opinion a sale may be necessary for the establishment or maintenance of said schools, or for the best interest of my estate." *Quoted in* Midkiff v. Kobayashi, 54 Hawaii 299, 330, 507 P.2d 724, 742 (1973).

[176] Major Landowners, *supra* note 172, at 20, 23-24.

[177] The Bishop Estate reported the basis of its tax assessment of July 1, 1972 was $360,592,000. *See* Honolulu Advertiser, Aug. 1, 1973, at A-7, col. 1. The state assesses property at 70% of real market value. Property Technical Office, Dep't of Taxation, Hawaii's Assessment-Sales Ratio Study 1973 at 1 (1974). Compare for example, the endowment of Stanford University at $365,000,000, Stanford University, Facts: Stanford University, 1973-1974, and the Carnegee Corporation at $284,-000,000, M. Lewis, The Foundation Directory 258 (1971).

[178] "In 1971-1972 the annual rents totaled $8,775,805. There was additional income of $666,968, from interest, dividends and other sources." Honolulu Advertiser, Aug. 1, 1973, at A-7, col. 1.

[179] Hawaii Rev. Stats. § 557-2(a)(3) (Supp. 1974).

[180] Will of Princess Bernice Pauahi Bishop, para. 13, Equity file No. 2048 (Hawaii Cir. Ct., 1st Cir. Dec. 2, 1884), *cited in In re* Bishop Estate, 53 Hawaii 604, 609-10, 499 P.2d 670, 674 (1972).

To combat the low return on its capital, the Estate has begun to lease large tracts of land to private companies which develop and sublet that land. These transactions, however, have sparked resentment among those Native Hawaiians who no longer believe that development is always beneficial. In 1969, for example, a broad-based political coalition opposed the eviction of a pig farmer from Bishop Estate land slated by the trustees for a Kaiser Aetna development.[183] It is ironic and unfortunate that a charitable estate would have prevented a traditional Hawaiian activity in order to produce revenue to educate Native Hawaiians. During the past five years, the Estate has attempted to raise capital by large acreage sales.[184] A 1970 sale of 2,300 acres to a developer was set aside as against the best interest of the Estate, because the trustees had not insured that the sales price was adequate.[185] In 1973, the Estate agreed to sell 15,000 acres on the island of Hawaii for $6,200,000,[186] a price of about $413 an acre.

The trustees have attempted to minimize public inquiry about Estate finances by pointing to the difficulties of running a tax-exempt foundation.[187] Their activities are shrouded in an accounting system that has been described as difficult to understand;[188] and, in the past, they have breached their legal obligation to publish annually a list of the Estate's assets in a Honolulu newspaper.[189]

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[181] Zalborg, *Bishop Estate-Kam Schools Relations*, Honolulu Advertiser, Aug. 1, 1973, at A-7, col. 1.

[182] Statement of Trustee Matsuo Takabuki in Honolulu Advertiser, July 31, 1973, at A-13, col. 1; The Kamehameha Schools, Providing Education Services for Hawaii's Youth (1973) (brochure to parents from the schools).

[183] *See* R. Pedersen, The Ad Hoc Committee for a Hawaiian Trustee 28, August, 1972 (unpublished thesis in University of Hawaii Library) [hereinafter cited as Pedersen].

[184] Nevertheless, the trustees recently claimed that tax consequences made the sale of *small* plots of Estate land prohibitive, thereby justifying their low cash flow. Hawaiian Advertiser, Aug. 1, 1973, at A-7, col. 1.

On the other hand, in the early 1960's, the Estate vigorously opposed legislation that would have allowed long-term lessees of residential property to purchase the remainder interests in leased lands. *See, e.g.*, H.B. 16, Reg. Sess. (1961). For discussion of the political battle *see* R. HOROWITZ & N. MILLER, LAND AND POLITICS IN HAWAII (1963). The Estate marshaled Native Hawaiian opposition to the legislation by pointing to the potential shrinkage of Estate holdings. *See generally* Pedersen.

[185] Midkiff v. Kobayashi, 54 Hawaii 299, 329-34, 507 P.2d 724, 743 (1973).

[186] Honolulu Star-Bulletin, July 11, 1973, at A-1, col. 2.

[187] Zalborg, *Bishop Estate-Kam Schools Relations*, Honolulu Advertiser, Aug. 1, 1973, at A-7, col. 1.

[188] Report of the Master on the Petition of the Trustees for Approval of the 83rd Annual Report at 30, Equity file No. 2048 (Hawaii Cir. Ct., 1st Cir. Sept. 25, 1970) [hereinafter cited as Master's Report].

The trustees could amplify the Estate's benefits to Native Hawaiians, consonant with the Bishop will, by making land available directly to Native Hawaiians. The Estate's sale of land to developers for $413 an acre indicates that the same or comparable land could have been made available to Native Hawaiian groups at a similar rate. Although the price may have been inadequate for a third party, it is arguably proper for a beneficiary.[190] This procedure would ease the problems of landless Native Hawaiians without lessening Estate revenues. Furthermore, the will directed the trustees to "devote a portion of each year's income to the *support* and education of orphans, and others in indigent circumstances, giving the preference to Hawaiians. . . ."[191] Case law is clear that trustees have latitude in implementing the intent of the testator as determined from a will in its entirety.[192] Under this authority the Estate could support indigent Native Hawaiians by leasing land to them at a nominal rate. In a narrower application of this principle, land and homes could be made available to indigent parents of students and potential students of the Kamehameha Schools.[193]

Since trustees have enormous discretion under the will, lawsuits probably cannot force them to take innovative action such as allowing Native Hawaiians free use of Estate land or deciding against development projects that might disrupt Native Hawaiian communities. Action by the trustees themselves is the best hope for such policy changes. The appointment of trustees sympathetic to the needs of Native Hawaiians is the surest means of effecting major changes within the Bishop Estate. Consequently, the Native Hawaiian community has attempted to reform the appointment of trustees. In 1971 the Ad Hoc Committee for a Hawaiian Trustee was formed to prevent the appointment of a non-Hawaiian to fill a vacancy on the Board of Trustees.[194] Although both the political movement and corollary lawsuits[195] were unsuccessful, when another vacancy opened up in 1974, the Supreme Court appointed a Native Hawaiian to the position.[196]

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[189] *In re* Bishop Estate, 16 Hawaii 804 (1905)

[190] See text accompanying note 193 *infra.*

[191] Will of Princess Bernice Pauahi Bishop, para. 13, Equity file No. 2048 (Cir. Ct., 1st Cir. Dec. 2, 1884); *cited in In re* Bishop Estate, 53 Hawaii 604, 609-10, 499 P.2d 670, 674 (1972) (emphasis added).

[192] *See* Estate of Weill, 48 Hawaii 553, 406 P.2d 718 (1965); Hawaiian Trust Co. v. Breault, 42 Hawaii 268 (1958).

[193] For a discussion of the interrelation of poverty and education, *see* C. JENCKS, INEQUALITY—A REASSESSMENT OF THE EFFECT OF FAMILY AND SCHOOLING IN AMERICA (1972).

[194] *See generally* Pedersen, *supra* note 183.

[195] Kekoa v. Supreme Court, 53 Hawaii 174, 516 P.2d 1239 (1973).

[196] Honolulu Star-Bulletin, Aug. 14, 1974, at A-1, col. 5.

However, lawsuits by Native Hawaiians are a proper means of enforcing the trustees' non-discretionary duties to account and to make the trust productive.[197] To date, Native Hawaiians have been reluctant to prosecute such suits for fear that, if brought into issue, the entire Estate program might be challenged as granting an unconstitutional preference on the basis of race. This concern was exacerbated in 1972 by a concurring opinion in an appeal to the Hawaii Supreme Court from a routine order approving an accounting by the trustees.[198] Justice Abe took the occasion to opine that the Bishop will does not require the Estate to prefer Native Hawaiians for admission to Kamehameha Schools,[199] even though this interpretation of the will conflicts with that of the original trustees, including the testator's husband.[200] Moreover, the opinion concluded that such a preference for Native Hawaiians would be unconstitutional.[201] The majority refused to discuss the question of preference since it had not been raised at the trial.[202] However, the issue will surely be judicially considered in the future.

Interpreting the will to require preference for Native Hawaiians in admission to the Kamehameha Schools raises the question of the constitutionality of such a provision in a charitable trust. The Equal Protection Clause of the Fourteenth Amendment forbids discrimination against a racial minority by a private school established by a state-administered will.[203] The United States Supreme Court has not yet decided whether providing special benefits to an economically disadvantaged minority groups can justify racial criteria in admissions.[204] Even if such programs are generally declared unconstitutional,[205] the Bishop Estate program should be considered constitutional as reasonably related to a legitimate concern for an indigenous people.

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[197] The Hawaiian Supreme Court has assumed without discussion that Native Hawaiians, as special beneficiaries of the Estate, have standing to sue. *See, e.g.*, Kekoa v. Supreme Court, 53 Hawaii 174, 516 P.2d 1239 (1973); *see also* 4 Scott on Trusts § 391 (2d ed. 1956). The Attorney General of the State also has authority to bring suit to protect the interests of beneficiaries of charitable estates. *See* Midkiff v. Kobayashi, 54 Hawaii 299, 335, 507 P.2d 724, 745 (1973).

[198] *In re* Bishop Estate, 53 Hawaii 604, 499 P.2d 673 (1972).

[199] He stated that the will

> provides simply for the erection of "two schools, each for boarding and day scholars, one for boys and one for girls . . ." The only racial limitation is contained in the direction "to devote a portion of each year's income to the support and education of orphans, and others in indigent circumstances, giving preference to Hawaiians of pure or part aboriginal blood . . ."

Id. at 610, 494 P.2d at 674 (Abe, J., concurring).

[200] Shoal of Time 299-301.

Although the interpretation of the will by Bernice's husband as trustee is not binding on a court, much is known of the allegiance which Bernice, the last of the Kamehameha line, felt towards Native Hawaiians. *See* H. Kent, Charles Reed Bishop: Man of Hawaii (1969); C. Black & K. Mellen, Princess Pauahi Bishop and Her Legacy (1959). Her testamentary intent would be carried out most faithfully by interpreting the preference clause as referring to all the charitable aims of the Estate.

[201] 53 Hawaii at 611, 499 P.2d at 674.

[202] *Id.* at 608, 499 P.2d at 673

[203] *See, e.g.*, Pennsylvania v. Board of Trusts, 353 U.S. 230 (1957) (The Girard College Case). *See also* Lusky, *National Policy and the Dead Hand: The Race Conscious Trust*, in 112 Trust and Estates 554 (1973).

United States statutes and case law[206] have traditionally applied special rules to American Indians. Congress has passed Indian legislation in the fields of education,[207] health,[208] civil liberties,[209] and general welfare.[210] *Morton v. Mancari*[211] upheld a statute[212] which required that Indians be preferred for employment within the Bureau of Indian Affairs. The Court specifically enunciated what had been implicit in earlier decisions:[213] Indian legislation is constitutional if ". . . the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians . . . ."[214] Although Native Hawaiians cannot properly be called "American Indians" in an anthropological sense, the plight of both groups as indigenous peoples within the United States calls for analogous legal treatment.[215] The phrase "Hawaiians . . . of pure or part aboriginal blood"[216] in the Bishop will is not as exclusive as the term "white." Our society tends to define one as white only if he or she has no other identifiable racial ancestry.

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[204] In the past term, the Court ruled moot a case which challenged an admission policy designed to increase minority enrollment at a law school. DeFunis v. Odegaard, 416 U.S. 312 (1974).

[205] For arguments supporting the necessity for and constitutionality of minority admissions programs, *see* Bell, *In Defense of Minority Admissions Programs: A Response to Professor Gaglia*, 119 U. PA. L. REV. 364 (1970); Morris, *Equal Protection, Affirmative Action and Racial Preferences in Law Admission: DeFunis v. Odegaard*, 49 WASH. L. REV. 1 (1973). For a general discussion of considering race in order to correct racial imbalance and discrimination, *see* Vieria, *Racial Imbalance, Black Separatism, and Permissible Classification by Race*, 67 MICH. L. REV. 1553 (1969).

[206] *See, e.g.*, Morton v. Mancari, 417 U.S. 535 (1974); Board of Comm'rs v. Seber, 318 U.S. 705 (1943).

[207] *See, e.g.*, 25 U.S.C. § 452 (1970), *formerly* Act of Apr. 16, 1934, ch. 147, § 1, 48 Stat. 596.

[208] 42 U.S.C. §§ 2001-2005(f) (1970), *formerly* Act of Aug. 1, 1954, ch. 658, 68 Stat. 674 (Indian Hospitals and Health Facilities).

[209] 25 U.S.C. §§ 1302-1303 (1970), *formerly* Act of Apr. 11, 1968, Pub. L. No. 90-284, §§ 202-03 (Indian Civil Rights Act).

[210] *See, e.g.*, 25 U.S.C. §§ 631-632 (1970), *formerly* Act of Apr. 19, 1950, ch. 92, §§ 1, 2, 64 Stat. 44 (Navaho and Hopi Tribes: Rehabilitation).

[211] 417 U.S. 535 (1974).

[212] Indian Reorganization Act of 1934, 25 U.S.C. § 472 (1970).

[213] *See* Board of Comm'rs v. Seber, 318 U.S. 705 (1943); Simmons v. Eagle Seelatsee, 244 F. Supp. 808 (E.D. Wash. 1965).

[214] Morton v. Mancari, 417 U.S. 535, 555 (1974).

[215] The United States Supreme Court has never defined the term "Indian" but has implicitly expanded its meaning to include Alaskan Aleuts and Eskimos, non-Indians under an "anthropological" meaning. *See* Alaska Pacific Fisheries v. United States, 248 U.S. 78 (1918), *aff'g* 240 F. 274 (9th Cir. 1917). *See also* Alaska v. Annette Island Packing Co., 289 F. 671 (9th Cir. 1923).

[216] See text accompanying note 180 *supra*.

One who has any Hawaiian blood is by definition part-Hawaiian. Thus although all of the students at the Kamehameha Schools have some Hawaiian blood, 83 percent have Caucasian ancestry, 67 percent have Chinese ancestry, 24 percent have Japanese ancestry, and 10 percent have Filipino ancestry.[217]

In sum, the Native Hawaiian preference regarding admission to the Kamehameha Schools is probably constitutional. Since the issue will undoubtedly be raised, remedial lawsuits aimed at correcting Estate deficiencies should not be avoided for fear that the preference clause will be declared unconstitutional.

C. *Hawaiian Home Lands*

Formed more than fifty years[218] ago to return Native Hawaiians to a pastoral life, the Department of Hawaiian Home Lands[219] has yet to provide the Native Hawaiian community with a substantial land base.[220] Although there are 190,000 acres under its jurisdiction,[221] less than 15 percent of that acreage is currently under lease to Native Hawaiian homesteaders.[222] Today, only 69 families live on ranch-size parcels and 365 families live on farms, usually of 40 acres.[223] Over 2,000 homesteading families have been assigned houselots, some as small as 7,500 square feet, in subdivision communities such as Papakolea in urban Honolulu and Kalamaula on rural Molokai.[224]

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[217] The Kamehameha Schools, Providing Education Services for Hawaii's Youth (1973) (brochure to parents from the schools).

[218] See text accompanying notes 126-142 *supra* on the formation of the Hawaiian Homes program. Problems of the Department of Hawaiian Home Lands have been extensively studied. *See generally* D. Clegg, Program Study and Evaluation of the Department of Hawaiian Home Lands, State of Hawaii (1971) [hereinafter cited as Program Study]; H. Doi, Legal Aspects of the Hawaiian Homes Program (Legislative Reference Bureau Rep. No. 1A, 1964) [hereinafter cited as Legal Aspects]; D. Hansen, The Homestead Papers: A Critical Analysis of the Management of the Department of Hawaiian Home Lands (1971) [hereinafter cited as Homestead Papers]; A. Spitz, Land Aspects of the Hawaiian Homes Program (Legislative Reference Bureau Rep. No. 1C, 1964) [hereinafter cited as Land Aspects]; A. Spitz, Organization and Administration of the Hawaiian Homes Program (1963).

[219] The Federal government gave title to Hawaiian Homes property to the state in Hawaii Admission Act, Pub. L. No. 86-3, § 5(b), 73 Stat. 5 (1959). The name of the administrative organization was then changed from the Hawaiian Homes Commission to the Department of Hawaiian Home Lands. The Department is a state executive branch directed by a Commission, whose seven members are appointed by the Governor and must include four Native Hawaiians of at least one-fourth native blood. Hawaii Const., Hawaiian Homes Commission Act, 1920, § 202. Provisions governing the Hawaiian Homes Commission Act are now part of the state constitution as required by the Hawaii Admission Act, § 4, 48 U.S.C. Prec. § 491 (1970).

[220] Doubts of the program's constitutionality were expressed both at the time of its adoption and at the time of statehood. *See* Legal Aspects, *supra* note 218, at 41-54. See text accompanying notes 205-217, *supra*, for a contrary argument.

[221] Dunn & Akinaka, A Land Inventory and Land Use Study for the Department of Hawaiian Homes 2-4 (1972) [hereinafter cited as Land Inventory]. There is a disparity between the original acreage established in 1920 and the present tally. *See, e.g.*, Homestead Papers, *supra* note 218, at 30. Dunn and Akinaka attempt to answer criticism that there are "missing" homestead lands. Land Inventory at 4.

[222] Land Inventory, app., table 2. However, almost 13,000 acres not under individual lease are used for community pastures for homesteaders. *Id.* See note 235 *infra*

The Hawaiian Homes program must be considered a failure as measured by its original objective to rehabilitate Native Hawiians by returning them to a farming life. Few of the families living on farm-size parcels actually engage in farming operations. Most have relinquished management of their land to pineapple companies in return for monthly stipends.[225] However, the program has succeeded in providing houselots which save some Native Hawaiians from expulsion due to rising land costs. The houselot program evolved from the political pressures of Native Hawaiian squatters at Papakolea who wished the land they were living on to be brought under Hawaiian Homes jurisdiction.[226] Today the greatest demand for homesteads is for urban houselots,[227] and accounts of twenty-year waits for houselots on land-short Oahu have been documented.[228]

Many explanations can be offered as to why the vast acreage of the Hawaiian Homes program has provided so few homesteads. Some critics have pointed to administrative heavy-handedness and lack of innovative thinking.[229] The Department itself blames the inferior qual-

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for land use of the remainder of Hawaiian Home Lands.

[223] J. Dunn & A. Akinaka, Ltd., A Land Inventory and Land Use Study for the Department of Hawaiian Home Lands 4 (1972).

[224] Department of Hawaiian Home Lands, Annual Report 5 (1973).

[225] Homesteaders are not allowed to sublet homesteads. Hawaii Const., Hawaiian Homes Commission Act, 1920, § 208(5). However, a series of Attorney General opinions approved arrangements which differ little from subleases. *See* Legal Aspects, *supra* note 218 at 14-16. The issue may become moot because pineapple companies are rapidly leaving the Hawaiian Islands. Honolulu Star-Bulletin, Dec. 14, 1973, at C-14, col. 5.

[226] *See* account in E. Heen, The Hawaiians of Papakolea: A Study in Social and Economic Realism, 28-31, June, 1936 (unpublished thesis in University of Hawaii Library).

[227] Currently over 3,300 Native Hawaiians, considerably more than the present number of homesteaders, are on waiting lists for urban lots. Department of Hawaiian Home Lands, Annual Report 4 (1973).

[228] *See, e.g.*, Honolulu Advertiser, Dec. 17, 1973, at A-6, col. 1; Honolulu Advertiser, Nov. 13, 1970, at C-3, col. 1.

At present the only way for an applicant to avoid the long waiting list is to receive a homestead through inheritance. If a homesteader dies, the remainder of the 99-year lease can descend or be devised but only to relatives enumerated in Hawaii Const., Hawaiian Homes Commission Act, 1920, § 209. Because of the widespread system of *hanai*, an informal Native Hawaiian adoption system, children who have lived with a homesteading family often cannot inherit because they do not have legal standing. See Op. Hawaii Att'y Gen. 18 (1973). Another inheritance problem arises under the Act's blood quantum requirement: homesteaders must have at least 50 percent Hawaiian blood. Hawaii Const., Hawaiian Homes Commission Act, 1920, § 201(7).

[229] *See, e.g.*, Homestead Papers, *supra* note 218.

ity of much of its land and the fact that its acreage is often located in a geographic area of low demand.[230] But the fundamental causes of the Department's failures inhere in its financial structure.[231] First, this structure confronts the Department with a clear conflict of interests. Although funding patterns have changed since 1920, a consistent source of revenue has been the public leasing of Department lands not assigned to Native Hawaiian homesteaders.[232] Today, the Department's internal administrative costs are provided from those receipts.[233] Although direct legislative appropriation is possible when revenue is insufficient to meet administrative costs,[234] the Department has usually chosen to generate funds from public leasing, thus withholding valuable property from homesteaders.[235] Whenever technological improvements or demographic movements make Hawaiian home lands valuable, the Department is faced with the choice either of allowing individual Hawaiians to use valuable land or of leasing it to non-Hawaiians in order to fund department expenses. Second, statutory fiscal ceilings stymie assignment of homesites. The Department will not open a houselot tract unless that tract has adequate roads, drainage systems and other improvements.[236] But the Hawaiian home-development fund, which finances these non-revenue producing improvements, has a statutory fiscal ceiling.[237] Similarly, it is Department policy not to award specific homesites unless the land has a completed home or firm construction plans.[238] Most Native Hawaiians are unable to finance construction of their own homes,[239] and banks are unwilling to lend money since Hawaiian Home lands cannot be mortgaged.[240] New applicants must therefore turn to the Department's Hawaiian home-loan fund for financing[241]—which also has a fiscal ceiling set by statute.[242] Thus, when homes cannot be built, land is not assigned to Native Hawaiian homesteaders.

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[230] *See* BIENNIAL REP. OF THE DEP'T OF HAWAIIAN HOME LANDS TO THE LEGISLATURE OF THE STATE OF HAWAII 6 (1971).

[231] For a description of the Department's byzantine funding scheme see PROGRAM STUDY, *supra* note 218, at 54-61.

[232] *Compare* Hawaiian Homes Commission Act of 1920, ch. 42, § 213, 42 Stat. 112, *with* HAWAII CONST., Hawaiian Homes Commission Act, 1920, § 213(f).

[233] HAWAII CONST., Hawaiian Homes Commission Act, 1920, § 213(f). From July 1, 1972 to June 30, 1973, the receipts from general leasing totalled $798,670, while administrative expenditures were $558,606. Statistics supplied in interview with Richard Paglinawin, Deputy Director of the Department of Hawaiian Home Lands, in Honolulu, Hawaii, Nov. 11, 1974.

[234] HAWAII CONST. Hawaiian Homes Commission Act, 1920, § 213(f)(3). If the income produced from general leases in a fiscal year is greater than the Department's approved budget, the extra revenues spill over into the Hawaiian home-development fund. *Id.* Thus, in fiscal year 1972-73, $240,064 from general lease revenue went to that fund.

[235] Today over 108,000 acres rae under general lease. LAND INVENTORY, *supra* note 218, app., table 2. Over 30,000 additional acres of Hawaiian Home Lands in water, forest, and game conservation districts are not benefiting Native Hawaiians to any greater degree than the public at large. *Id.*

[236] Shapiro, *Hawaiian Homes Panel Changes Leasing Policy*, Honolulu Star-Bulletin, May 26, 1973, at A-10, col. 2.

[237] The ceiling for the Hawaiian home-development fund is, in fact, $1,250,000 because of limitations on its sources of revenue. PROGRAM STUDY, *supra* note 218, at 56.

[238] Shapiro, *Hawaiian Homes Panel Changes Leasing Policy*, Honolulu Star-Bulletin, May 26, 1973, at A-10, col. 2.

Three major changes could assure more rapid homesteading of the land. First, the Department could assign homesites before houses are constructed, especially within existing tracts that do not need further development. In 1973, the commissioners voted unanimously to release unimproved lands for houselots,[243] but rescinded their action at the next regular meeting.[244] Since the Hawaii Attorney General has interpreted the Hawaiian Home lands as being exempt from the zoning powers of the counties,[245] homesteaders could make immediate use of assigned land, even if they were unable to conform to housing codes. Second, the Department should reverse its present policy of denying houselots to Native Hawaiians whose net assets exceed $10,000. Although it might be justifiable for the Department to withhold construction loans from middle-class Native Hawaiians so that its limited funds can provide homes for the poor, the Department has, by favoring general leasing and refusing homesteads to Native Hawaiians with sufficient funds to construct their own homes, perpetuated the use of Hawaiian Home lands by non-Hawaiians. Furthermore, it can be argued that Hawaiian Homes communities should reflect the true economic range of the Native Hawaiian community, rather than just its poorest members. Finally, adequate funding is necessary to develop homesteads. The statutory ceilings on the Hawaiian home-loan fund and the Hawaiian Home-development fund must be removed. The Department should also attempt to generate funds from outside sources, such as the federal government, to finance home construction for Native Hawaiians.[246] The Department should seek appropriate statutory amendments[247] to allow use of the Hawaiian home-loan fund to insure the flow of private capital into Hawaiian Homes construction; a small amount of Department funds could thus generate the flow of much greater amounts for capital. A program might be patterned after the federal program of student loans,[248] with the Department guaranteeing private loans to Native Hawaiians.[249] Such guarantees might encourage banks to grant construction loans without requiring collateral since experience has indicated that most homesteaders will not fall into serious default.[250]

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[239] Department regulations forbid the awarding of a houselot to any person with net assets over $10,000 or "whose net worth, together with that of his spouse, is in excess of $15,000." DEP'T OF HAWAIIAN HOME LANDS, RULES & REG. § 5.01 (1973).

[240] HAWAII CONST., Hawaiian Homes Commission Act, 1920, § 208(5). As an exception property can be mortgaged to another Native Hawaiian with Department permission. *Id.*

[241] Under the usual arrangement, the applicant receives a land lease at a nominal rate, but must make monthly payments to the Department for monies lent for home construction. *See* discussion in Kila v. Hawaiian Homes Commission, No. 74-12 (D. Hawaii, Sept. 17, 1974).

If a homesteader wishes to surrender a homestead, the Department must pay him for certain improvements on the property. The Department will then award the homestead to an applicant on the waiting list who must agree to repay the Department that value. HAWAII CONST., Hawaiian Homes Commission Act, 1920, § 209(1).

[242] The ceiling for the Hawaiian home-loan fund is $5,000,000. HAWAII CONST., Hawaiian Homes Commission Act, 1920, § 213(b).

[243] Honolulu Star-Bulletin, May 26, 1973, at B-1, col. 1.

[244] Minutes of Hawaiian Homes Commission, Aug. 31, 1973, on file in Department of Hawaiian Home Lands.

[245] OP. HAWAII ATT'Y GEN. 21 (1972).

Since the above changes will require a major commitment of funds by the State, the Department must be willing to lead a compaign for the legislative[251] and budgetary changes necessary to increase utilization of homesteading. It is hardly in position to lead this fight while it is still dependent on general lease revenue for its administrative costs. Therefore the State's initial step must be to finance these costs from its general budget.[252]

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[246] *See* Program Study, *supra* note 218, at 27 for discussion of the difficulties of homesteaders receiving FHA loans. *See also*, Hawaii H. Con. Res. 56, Reg. Sess. (1971), requesting Hawaii's Congressional delegation to investigate statutory changes to allow Native Hawaiian homesteaders to receive assistance under the National Housing Act of 1949 and from the Farmer's Home Administration.

[247] "Both the Admissions Act and the State Constitution delineate the methods by which the HHCA may be amended. [Hawaiian Statehood Act, § 4, 48 U.S.C. Prec. § 491 (1970); Hawaii Const. art. XI, § 3.] Certain provisions of the Act relating to administration, duties of non-administrative officials, and the increase of benefits to lessees (native Hawaiians) may be amended 'in the constitution, or in the manner required for State legislation . . . .' Generally speaking, all other provisions may be amended only with the consent of the United States." Kila v. Hawaiian Homes Commission, No. 74-12 (D. Hawaii Sept. 17, 1974) (court footnote in brackets). *See also* Legal Aspects, *supra* note 218, at 66-70.

[248] Higher Education Act of 1965, 20 U.S.C. §§ 1071-1086 (1970).

[249] Program Study, *supra* note 218, at 22-25 makes this proposal along with the suggestion for interest subsidies in this era of high interest rates. A bill to allow the Department to make such guarantees was introduced into the Hawaii legislature in 1971 but was not passed. H.B. No. 1592 Reg. Sess. (1971).

[250] At present, 41 percent of homesteaders are to some degree delinquent on loan payments, but fewer than 20 percent are more than 120 days behind in payments. Honolulu Advertiser, Jan. 30, 1974, at A-13, col. 7.

[251] The Department cannot homestead more than 20,000 new acres in any five year period. Hawaii Const., Hawaiian Homes Commission Act, 1920, § 204(3). In the past, the Department has never approached this limit, but if homesteading is to be drastically increased, the section may have to be repealed.

[252] To guard against any conflict of interest, revenue from the general leasing of Hawaiian Home Lands should not be separately tabulated, but should be included in the State's general revenues.

D. Hawaiian Land Claim

On June 27, 1974, a bill was submitted to the United States House of Representatives "to provide for the settlement of historic claims of the Hawaiian Natives."[253] The bill would establish an Hawaiian Native Fund of one billion dollars, deposited in 10 equal yearly amounts, to be administered by the Secretary of the Interior.[254] One corporation would be empowered to make distributions from the Fund to benefit Native Hawaiians;[255] the board of directors would be elected by all fullblood or part-blood Native Hawaiians.[256] The Hawaiian drive for reparations, spearheaded by the "ALOHA" movement (Aboriginal Lands of Hawaiian Ancestry), has grown over the past two years,[257] partially motivated by the success of the Alaska Native Claims Settlement Act.[258] Under that settlement, Alaskan Natives will receive almost one billion dollars and 38 million acres of land.[259] Native Hawaiians see similarities between their claims and those of the Alaskans. In both cases, the United States, without paying compensation to the indigenous population,[260] gained title to land in territories that later became states.[261]

The Native Hawaiian land claim can also be compared to United States compensation for the lands of North American Indian tribes. Where Indian title to land had been recognized, taking could be only by consent, such as a treaty, or by compensation.[262] Despite the words of the fifth amendment, jurisdiction to hear the claims of Indian tribes was removed from the Court of Claims in 1863.[263] Congress had to pass a special jurisdictional act for each Indian claim, until 1946, when Congress adopted the Indian Claims Commission Act.[264] The Act vested jurisdiction in the Indian Claims Commission and waived defenses based upon sovereign immunity or the passage of time.[265] A five-year time limit was set for any tribe on the mainland or in Alaska to present specified claims to the Commission:

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[253] Hawaiian Native Claims Settlement Act, H.R. 15666, 93d Cong., 2d Sess. (1974). At the time of this writing, the measure had not been introduced in the 94th Congress.

[254] *Id.* § 5(a).

[255] *Id.* § 6. *Compare* the Alaska Native Claims Settlement Act, Pub. L. No. 92-203 § 7(a) (Dec. 18, 1971), 85 Stat. 691 in which Congress established 12 regional corporations because of the cultural diversity in Alaska.

[256] H.R. 15666, 93d Cong., 2d Sess., § 6(f) (1974).

[257] For an account of Queen Liliuokalani's unsuccessful attempt to seek redress, *see* Liliuokalani v. United States, 45 Ct. Cl. 418 (1910).

[258] Alaska Native Claims Settlement Act, Pub. L. No. 92-203 (Dec. 18, 1971) 85 Stat. 688-716. This bill provided for settlement of a claim filed by Alaskan natives under the Indian Claims Commission Act, 25 U.S.C. § 70 (1970). See text accompanying notes 264-70 *infra*.

[259] Alaska Native Claims Settlement Act, Pub. L. No. 92-203 (Dec. 18, 1971) §§ 6(a), 12, 85 Stat. 690-91, 701-02.

[260] "In both Alaska and Hawaii Organic Acts Congress left open the possibility of a future settlement of land claims." R. Jones, A History of the Alaska Native Claims, April 20, 1973 at 31 (unpublished study for Congressional Reference Service, in Library of Congress). *Compare* Alaska Organic Act, ch. 53, 23 Stat. 24, 26 (1884), *with* Hawaiian Organic Act ch. 399, § 73, 31 Stat. 141 (1900).

[261] A nation does not automatically gain title to privately held land over which it asserts political sovereignty. *See* United States v. Percheman, 32 U.S. (7 Pet.) 51, 86 (1833); *but cf.* Milirrpum v. Nabalco Pty. Ltd., 17 F.L.R. 141, 200 (Austl. 1971). *See generally* A. SNOW, THE QUESTION OF ABORIGINES (1921).

[262] "When the Congress by treaty or other agreement has declared that thereafter Indians were to hold the lands permanently, compensation must be paid for subsequent

> (1) claims in law or equity arising under the Constitution, laws, treaties, of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mututal or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) *claims based upon fair and honorable dealings, that are not recognized by any existing rule of law or equity*[266]

More than 300 claims have been presented under the Act,[267] many of which were based exclusively on the "fair and honorable dealings" clause.[268] This clause indicated that moral as well as legal considerations were relevant.[269] In debate over the bill, then Congressman Henry Jackson stated,

> Let us pay out debts to the Indian tribes that sold us the land we live on . . . . [L]et us make sure that when the Indians have their day in court they have an opportunity to present all their claims of every

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taking." Tee-hit-ton Indians v. United States, 348 U.S. 272, 277-378 (1955). *But see*, D. Brown, Bury My Heart At Wounded Knee (1970) for a contrary view of the treatment of Native Americans by the United States.

[263] Act of March 3, 1863, ch. 42, § 9, 12 Stat. 765, 767.

[264] 25 U.S.C. § 70 (1970).

[265] *Id.* § 70(a).

[266] *Id.* (emphasis added).

[267] *See* Vance, *Indian Claims—The U.S. Experience*, 38 Sask. L. Rev. 1, 6 (1974).

[268] *See, e.g.*, Gila River Pima-Maricopa Indian Community v. United States, 467 F.2d 1351 (Ct. Cl. 1972); Osage Nation of Indians v. United States, 97 F. Supp. 381 (Ct. Cl. 1951).

[269] Representative Karl Mundt stated, "If any Indian tribe can prove it has been unfairly and dishonorably dealt with by the United States, it is entitled to recover." 92 Cong. Rec. A4923 (1946) (extension of remarks of Rep. Karl Mundt).

> kind, shape, and variety, so that the problem can be truly solved once and for all . . . .[270]

Native Hawaiians have not yet received compensation for the less than fair and honorable treatment they suffered at the hands of Western settlers of Hawaii.[271] Uncompensated taking of title to government and Crown lands by the United States at the time of Annexation could support a compensation claim. There are two interrelated objections to compensating Native Hawaiians. First, some of the lands taken were Crown lands and therefore it can be argued that compensation for them should go to the heirs of Queen Liliuokalani. However, the Court of Claims denied compensation to Queen Liliuokalani partly on the grounds that the land should not be treated as private property.[272] Second, much of the land taken by the United States after annexation was returned to the State of Hawaii at the time of statehood.[273] Nevertheless, the federal government today retains title to approximately 400,000 acres.[274] Moreover, at the time of statehood Native Hawaiians comprised only a minority of citizenship, unlike their majority status at the time of annexation.[275] This delay in exchanging federal title for state title cost Native Hawaiians the power to control the use of the returned land. Specific Congressional legislation is probably necessary to authorize a suit for compensation. No action could be brought under the Indian Claims Commission Act which is limited to claims by mainland Indians and Alaskan Natives.[276] Nor does it seem likely that an action could be brought in the Court of Claims based on its jurisdiction over claims against the United States founded upon the Constitution;[277] it is doubtful that annexation included a fifth amendment taking[278] and any claim so founded would probably be time-barred.[279]

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[270] 92 Cong. Rec. 5312 (1946) (remarks of Congressman Jackson).

[271] It is doubtful that the *Kuleana* Act which reduced the land rights of commoners from approximately one-third of the kingdom to fewer than 30,000 acres could support a land claim against the United States. First, the act was passed during the time of the Hawaiian Kingdom, a half century before American sovereignty was asserted. Additionally the Hawaiian Constitution of 1840 had no clause requiring compensation for the taking of property.

[272] Liliuokalani v. United States, 45 Ct. Cl. 418, 527 (1910).

[273] *See* Hawaiian Statehood Act, § 5, 48 U.S.C. Prec. § 491 (1970).

[274] Major Landowners, *supra* note 218 at 99.

[275] A. Lind, Hawaii's People 27 (1955). Most Chinese and Japanese inhabitants were excluded from citizenship at the time of annexation. See note 115 *supra.*

[276] 25 U.S.C. § 70(a) (1970).

[277] "The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded . . . upon the Constitution . . . ." 28 U.S.C. § 1491 (1970).

[278] *Cf.* Tee-hit-ton Indians v. United States, 348 U.S. 272 (1955).

[279] "Every claim of which the Court of Claims has jurisdiction shall be barred un-

The proposed Hawaiian Native Claims Settlement Act would place a dollar value on the Native Hawaiian land claim, rather than establishing a claims procedure.[280] Native Hawaiians could thus avoid issues that have complicated other compensation litigation,[281] for example, the judicial determination of the value of the land at the time of the governmental taking.[282] In the Alaska Native Claims Settlement Act, Congress determined the total value of the claim in order to avoid such difficulties,[283] and this procedure should be followed for Hawaii. Since there will be few, if any, additional claims by indigenous people, Congress need not fear the work load inherent in this task of establishing the dollar value of land claims.

The Hawaiian Native Claims Settlement Act also avoids a premature decision on whether compensation funds should be distributed per capita to the claimants or used for cooperative development.[284] Funds would be turned over to the Hawaiian Native Corporation, which would be empowered to use funds for either purpose.[285] By participating in the corporation, Native Hawaiians could determine the Fund's uses.[286] Many Native Hawaiian land problems could be remedied if the corporation allocated funds for community development. For example, funds could be used to defractionate *kuleana,* to finance housing construction on Hawaiian Home lands,[287] and to purchase additional lands for Native

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less the petition thereon is filed within six years after such claim first accrues." 28 U.S.C. § 2501 (1970).

[280] H.R. 15666, 93d Cong., 2d Sess. § 5(a) (1974).

[281] California Indians, for example, began their claims movement in 1902 and did not receive final compensation until 1973. For a discussion of the California claims fight *see generally* K. JOHNSON, K-344 FOR THE INDIANS OF CALIFORNIA VS. THE UNITED STATES (1966).

[282] Under court-developed doctrines, claimants were not entitled to the land's present value but only to the value of the land at the time of the governmental action, unless that action amounted to a fifth amendment taking, in which case the claimants were also entitled to imputed interest. *Compare, e.g.,* Fort Berthold Reservation v. United States, 390 F.2d 686 (Ct. Cl. 1968) and Uintah and White River and White River Band of Indians, 152 F. Supp. 953 (Ct. Cl. 1957) *with* United States v. Kiowa, Comanche and Apache Tribes, 163 F. Supp. 603 (Ct. Cl. 1958).

Perhaps the most sensible question concerning these cases was asked by Professor Monroe Price:

> But how much sense does it make for judges, anthropologists, lawyers and Congressmen to go through incredible contortions to determine what occurred one hundred years ago and base compensation on such a determination?

M. PRICE, LAW AND THE AMERICAN INDIAN 356 (1973).

[283] See note 259 *supra.*

[284] On the other hand, the Alaska Native Claims Settlement Act, Pub. L. No. 92-203, § 7(j), 85 Stat. 688 (1971) mandates some *per capita* distribution.

[285] H. 15666, 93d Cong., 2d Sess. § 6 (1974).

[286] See text accompanying note 256 *supra.*

[287] Interestingly, H.R. 15666 does not vest rights to the Hawaiian Home Lands in the Native Hawaiian Community.

Hawaiians.[288] If the Bishop Estate needed to sell lands to maintain its liquidity, the corporation could buy them so that the Estate land would continue to serve Native Hawaiians.

Compensation to indigenous people is essentially an ethical rather than a legal issue. Annexation removed from Native Hawaiians the opportunity to assert sovereignty over a homeland. The Hawaiian Native Claims Settlement Act would allow Native Hawaiians to reestablish some degree of cultural autonomy.

CONCLUSION

A central theme of Hawaiian history during the past two centuries has been the continual displacement of Native Hawaiians from the control and ownership of the lands of Hawaii. This trend has been less than monolithic; Native Hawaiians have received access to a token land base through ameliorative steps such as *kuleana* and the Hawaiian Homes program. Recent pressures against Native Hawaiian land holdings are posed by increased immigration and commercial growth. Just as displacement of Native Hawaiians was accomplished primarily through manipulation of the legal system, so, too, legal action is necessary to assure Native Hawaiians a future on the Islands. *Kuleana* will continue to be lost unless the legal rights of their owners are protected. Structural changes are necessary if Native Hawaiians are to fully utilize the Bishop Estate and Hawaiian Homes land. One catalyst for change would be a major award from the United States in compensation for lands taken in the past. But without a concomitant commitment by the legal system to preserve a land base for Native Hawaiians, their future on the very Islands that nurtured their culture is bleak.

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[288] The bill would give the corporation first option to acquire return of surplus federal lands. H.R. 15666, 93d Cong., 2d Sess. § 7 (1974).

Senator MATSUNAGA. Thank you very much.

It is now 12:25. We were scheduled to go for lunch at 12 and be back here at 2. Let's see. Is Dr. Immerman here?

Would you like to testify now or come back after lunch?

Dr. IMMERMAN. Whatever is more convenient for you.

Senator MATSUNAGA. Then we'll come back at 2 o'clock.

[Whereupon, a recess was taken until 2 p.m.]

AFTERNOON SESSION

Senator MATSUNAGA. The committee will come to order.

Professor Levy, are you here?

[Professor Levy was not present.]

Professor Levy indicated a few historical analogies to the Hawaiian situation, and I would appreciate it if he would submit for the record a more detailed comparison. So staff will you notify Professor Levy.

I was just saying, Professor, that since you indicated a few historical analogies to the Hawaiian situation, I would appreciate if you would submit for the record a more detailed comparison. And I especially would like a comparison with the California situation, and the claims for which the United States provided compensation whether the claims arose during the Spanish administration, the Mexican or under the Republic of California, or by the United States after annexation. If the claims arose prior to annexation, I would appreciate an analysis as to whether the United States accepted a responsibility as the successor government, as we did with Alaska when we purchased it from Russia.

Mr. LEVY. I'd be pleased to do that. I'll be able to get it to you within a couple of weeks. Basically, in international law, the document that established that when one becomes a successor government, if one wants to take the benefit, one takes the just debts. I'd be pleased to provide that.

Senator MATSUNAGA. Thank you. And thank you again for your most analytical presentation.

Mr. LEVY. Thank you.

Senator MATSUNAGA. Since we left for lunch, I guess, people want out and had some very stimulating lunch. Because when we left we had a total of 18 witnesses, and now we come back and I see a list of 35 witnesses; which means that we're going to need to cut down on the time. You see that red light in front of the witnesses—that light there? That is the red light. When I push the button here, it becomes green. And that means go. When the red light comes on, that means stop. It's just like a traffic light, you know.

I would appreciate very much if you would abide with the light system, however, we do have a few experts here who we would like to hear more from. So we will allow them a little more time if they find it necessary.

I'm going to have to cut the rest of you down to 4 minutes, I think. And then if you need to, after the red light goes on wrap it up, in 1 minute or half a minute. We will now begin with our next witness, Dr. Richard Immerman, Department of History, University of Hawaii.

STATEMENT OF DR. RICHARD H. IMMERMAN, ASSISTANT PROFESSOR OF HISTORY, UNIVERSITY OF HAWAII

Dr. IMMERMAN. Senator Matsunaga, Representative Akaka, and by extension, the Congress and people of the United States. My name is Richard Immerman, and I am an assistant professor of history at the University of Hawaii, Manoa. My specialty is the history of United States foreign policy, and in addition to teaching, I have authorized or coauthored three books on my specialty, as well as numerous articles that were published by scholarly journals. I will be submitting a paper expanding upon and documenting what I am testifying to today.

I mention my credentials in order to suggest why I am somewhat puzzled by the nature of these hearings, at least that aspect which focuses on, if I may quote from Senator Matsunaga's press release of February 24 of this year, quote:

"The sharp differences in opinion among the members of the Native Hawaiians Study Commission, with respect to the role of the United States in the 1893 overthrow of the monarchy."

I am puzzled because, to be frank, among professional historians of U.S. foreign policy, there is absolutely no disagreement whatsoever with respect to the U.S. role in the 1893 revolution. To summarize, this consensus view, arrived at long ago, after years of careful scrutiny of a plethora of archival sources, is that from the conclusion of the Civil War, indeed even prior to the Civil War, America's policymaking community moved consistently and inexorably toward a posture of support for the establishment of U.S. hegemony over the Hawaiian Islands. As a consequence, the categorically improper actions taken by the Minister to Hawaii, John Stevens, in 1893 and subsequent annexation in 1898, were a culmination of, not a departure from, previous diplomatic initiatives.

Within this context, no scholar will dispute that each administration from at least that of Andrew Johnson to that of William McKinley sought, albeit by various means, to assure that Hawaii became an integral part of, and remained an integral part of, what Secretary of State James G. Blaine labeled the "American System." Accordingly, and appropriately, it was Secretary of State William Seward, the father of the insular design for American expansion which was to serve as the guidepost for our foreign policy throughout the final third of the 19th century, who in, 1867, proposed an initial treaty of reciprocity. Even at this early date, Seward fully understood, as naval strategist Alfred Thayer Mahan would soon explain, that:

"Reciprocity is the logical corollary of expansionism."

Largely due to the ideological fragmentation and personal animosity that characterized the political order during the reconstruction era, Seward's initiative met with defeat in Congress. But with the election of Ulysses S. Grant, the legendary diplomat's goal was realized. Formulated by his successor, Hamilton Fish, in 1875 a Treaty of Reciprocity received the Senate's advice and consent, a treaty which included the proviso prohibiting the kingdom from negotiating an equivalent with any other nation. As expected, the effect of that treaty was to make Hawaii a literal dependent of the United States.

To illustrate, from 1876 to 1891, at which time the McKinley Tariff was implemented, Hawaiians exported 274,982,577 pounds of sugar, a tenfold increase over prereciprocity figures. Of this total of close to 285 million, all but 285 pounds went to the United States. Small wonder that when the treaty was renewed, the United States could successfully demand the exclusive right to Pearl Harbor.

Still, for leading American policymakers, flushed with pride over our second industrial revolution and imbued with a sense of Anglo-Saxon superiority, this dependent relationship was not sufficient. To understand their dissatisfaction, one must look to not just potential rivalries from, for example, Britain, Japan, or even Russia. But, more fundamentally, look at the root cause for their concern, which stemmed from the internal dynamics of American society. In fact, the same explosion of America's economy that instilled in policymakers their understandable pride instilled an equally understandable fear. Even as the gross national product quadrupled during the last quarter of the 19th century, and population leaped by 97 percent, America confronted a staggering series of depressions that threatened to shred the very fabric of society. With the depressions precipitating populist unrest and increasingly radical unionization, those in Washington, regardless of political affiliation, came to question the survival of America's most fundamental institutions. In order to tranquilize society, they believed, an antidote would have to be found for this epidemic of depressions. That antidote was international trade, gaining unrestricted access to foreign outlets in order to relieve the surplus of production. And of these outlets, there was one of paramount importance.

That was China, the fabled China market. It was the lure of the China market that directed, as one expansionist spokesman remarked, "Westward the star of empire."

It is within this overall framework that the importance of establishing America's absolute hegemony over Hawaii emerges in bold relief. These islands, especially Oahu with its hospitable Pearl Harbor, laying directly en route between the projected isthmian canal and the potential riches of the Far East, would serve as the coaling station, the naval port, and the communications terminal essential to facilitate and protect America's vital commercial expansion. Quite logically, therefore, Secretary Blaine even in 1881 wrote the American Minister in Honolulu that:

> The situation of the Hawaiian Islands, giving them the strategic control of the North Pacific, brings their possession within the range of questions of purely American policy. It is the key to the maritime dominion of the Pacific states.

And quite logically, therefore, President Grover Cleveland, in his annual address in 1885, expressed his "unhesitating conviction that the intimacy of our relations with Hawaii should be emphasized." And quite logically, therefore, when President Benjamin Harrison succeeded Cleveland and reappointed Blaine as Secretary of State, he commented:

> You know, I am not much of an annexationist, though I do feel that in some directions, as to naval stations and points of influence, we must look forward to a departure from the too conservative opinions which have held heretofore.

Blaine agreed:

> I think there are only three places that are value enough to be taken. . . . One is Hawaii . . .

Such a consistent pattern of thought makes the argument that Minister Stevens' actions in 1893 were either conceived unilaterally or motivated simply by an inherent responsibility to protect American lives and property utterly untenable. Stevens was a veteran foreign service officer, an avowed expansionist, and a longtime associate of the equally expansionist James G. Blaine. When Blaine designated Stevens Minister of Hawaii, he explicitly instructed him to read all the previous State Department dispatches concerning the U.S. interest in the kingdom, at the same time writing Cleveland:

> Hawaii may come up for decision at an unexpected hour, and I hope we shall be prepared to decide in the affirmative.

The administration was prepared, but, in the event, the hour was far from unexpected. Throughout 1892 Stevens inundated Blaine with a stream of alarmist missives, describing political conditions as "feverish" and opining that "annexation must be the future remedy." He predicted a revolution, and, indeed, went so far as to query Blaine.

> If the Government here should be overturned, I desire to know how far the present minister and naval commander may deviate from established international law and precedents.

It is true that we have no record of Blaine's response, but, a highly intelligent and astute man, the Secretary could not have failed to appreciate the drift of his protege's sentiments. Had he disapproved of this drift, he certainly would have informed Stevens so.

As one scholar correctly analyzed, by not admonishing Stevens not to deviate from established international law and precedents, Blaine, his successor William Foster, and President Harrison "incurred a clear responsibility for Stevens' actions when the revolution occurred." And it is on the record that Harrison himself encouraged the revolution.

Let me conclude by noting that after Stevens authorized the intervention of U.S. forces, proclaimed an American protectorate, and raised the American flag; he wrote Washington:

> The Hawaiian pear is now fully ripe, and this is the golden hour for the United States to pluck it.

However, due to the subsequent informed opinion of President Cleveland and Secretary of State Gresham that, to quote Gresham: "A great wrong has been done to a feeble but independent state by the abuse of the authority of the United States," the hour for plucking was delayed.

Nevertheless, with the election of William McKinley, who exhibited no such qualms, and the outbreak of the Spanish-American War, which underscored Hawaii's strategic value, the hour did finally arrive. By joint resolution of Congress, Hawaii was annexed. In McKinley's words, this act was "the inevitable consequence" of decades of United States policy.

Senator MATSUNAGA. Thank you very much for your historical presentation. We sincerely appreciate it.

Our next witness will be Mililani Trask.

STATEMENT OF WILLIAM B. TRASK

Mr. **Trask**. Thank you very much for this opportunity to be here. I am glad to be able to testify before the people of who I recognize finally.

I would like to begin my testimony first, by saying that I have been involved with a legal inquiry concerning the Hawaiian lands for at least 6 years. I was very disappointed when I read the legal analysis in volume I, primarily the attempt that was made therein to make applicable the legal doctrine of recognized, and aboriginal, title to the Hawaiian people. In my estimation, that cannot be done legally.

Aboriginal title is title in indigenous people which has been lost by virtue of discovery, occupation, and conquest. Recognized title, is title that is recognized in a tribal corporate entity by the American Government. Native Hawaiians are not tribes. And their lands were not taken by discovery, occupation, and conquest. Consequently, my feeling is that those legal doctrines cannot be applied to the Hawaiian situation.

What I think is undeniable, at this point, is that Queen Liliuokalani and the Republic ceded the sovereignty of the dominion and the domain of the Hawaiian Kingdom to the U.S. Government. Now, what does that really mean? That's the beginning point of my legal research. If I could quote for a minute from a volume of international law:

> Ceded territory forthwith comes under the complete and absolute sovereignty of the nation to which it has been ceded, and the allegiance of its inhabitants and the duty of protection to them devolve in the new sovereign. While the allegiance of the inhabitants of the ceded territory changes, their private rights, such as rights of property, are generally unaffected by the transfer, although the new sovereign may prescribe compliance with formalities as a condition of recognizing titles.

Consequently, when you take a look at the Hawaiian situation, we begin with cession of sovereignty and not with treaty law. The correct inquiries in my estimation, are the following:

What became of the property rights of the native people of Hawaii after cession? Did the United States ever recognize title to real property in the native people; and if so, how was title conveyed? Lastly, in the years following cession, how did the U.S. Government interpret its duty to protect the inhabitants of Hawaii?

It is in this light that I consider the question of reparation. The history of Hawaii contain in the documents of annexation, and in State and Federal statutory law, indicate that the U.S. Congress was well aware of the powers and obligations that it assumed when it accepted cession by the Queen and also by the kingdom. After cession but before statehood, the ceded territory was completely and absolutely under the control of the Federal Government. But when America finally recognized title to land in the State of Hawaii in 1959, they prescribed that the State, as part of the compact of admission into the Union, was to comply with certain familiarities, namely that the State accept certain trust obligations relating to the Hawaiian Home Lands and to the ceded lands. These trust obligations were owed not only to the public, but also to the natives.

Now, subsequent to annexation, the U.S. Government created two trusts by which it recognized the property interests of the people. The first was created in 1920—that was the Hawaiian Homes Commission Act trust; it was imposed upon roughly 200,000 acres of land. The second trust, which evolved directly as a result of cession, is contained in section 5(f) of the Admissions Act. I estimate amounts to approximately 1.4 million acres of land and revenues therefrom. This is an estimation because the State has yet to inventory the public lands. That has not been done.

Why did Congress encumber the lands that it patented to the State in trust? It did so because as a necessary consequence of cession, they owed an obligation to the inhabitants to protect their property rights. The Treaty of Annexation, the resolution of the Senate ratifying that treaty, and the Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States, all provided that the property rights of the inhabitants of the Hawaiian Islands would be protected.

Now, the U.S. Government did not make any distinction between public and native rights until 1920, when it adopted the Hawaiian Homes Commission Act. The intent of Congress was to create a class of lands that would be separate and distinct from other public lands and to preserve them for the exclusive use of natives. I think that the history is clear, now that the State-Federal task force report is in. The Supreme Court indicated that the *Ahuna* case that primary trust obligations for managing the Hawaiian home lands was with the Federal Government until 1959. The State-Federal task force report indicates that during the years between 1920 and 1959, during the time that the Federal Government controlled the Hawaiian home lands, the trust assets were wasted and titles to thousands of acres of Hawaiian home lands were transferred to other territorial departments. These departments utilized these lands and never paid compensation for it.

From its inception, we had a problem—the act says that we're to have 200,000 acres of land; we estimate that we've had 188,000 acres. This 20,000 acre discrepancy, the State-Federal task force recommended that the Federal Government not convey surplus status, in order to make up this deficiency. The record also indicates that by nine territorial government's proclamations, and 28 governors executive orders, Federal agents withdrew over 30,000 acres of Hawaiian home lands for use by other departments. There were also hundreds of acres withdrawn under what were called exceptions to the act. The State-Federal task force did not have time to explore this area, but we did make some comments to it.

Lastly, in 1959, when the Federal Government turned over the control of the lands to the State, the Federal Government did not marshall the lands or return the access to the Department of Hawaiian Home Lands. In 1959, when the Federal Government stepped out and passed the obligation to the State by virtue of the compact of admission—and in this in section 5(f) of the Admissions Act—the Federal Government actually surrendered the control and management of these lands to departments other than the Department of Hawaiian Home Lands. This is why the Department of Land and Natural Resources to this very date controls a great deal of Hawaiian home lands. They got it in 1959.

The history of the State's management of Hawaiian home lands is not any better than the history of the Federal management. But

I think that with regard to the Hawaiian home lands, we have a good basis on the State-Federal task force report—we have some recommendations there for implementation of right of action for the native beneficiaries and also we have asked for moneys to be paid as compensation.

With regards to the ceded lands trust, it's very interesting if you look at the history of ceded lands trust. In 1946, as Mr. Levy pointed out, the Department of the Interior was struggling with the question of the Indian Claims Act. In 1947, the Department of Interior embarked on a course of amending—of writing amended divisions to H.H. 49, which was the predecessor document to the Admissions Act. The Department was well aware of the problems that they had had with the Indian Claims Act. They knew that indigenous people would need land to preserve their cultural heritage. The Department of the Interior made certain recommendations to Congress to be included in what was eventually the section, granting clause and trust provision of section 5(f). The Department of the Interior did this—there is some quotes in my testimony indicating where you can find the citation—but the concern of the Department was to protect the obligation that the Federal Government had to the indigenous people.

The history of the mismanagement of the 5(f) trust is a matter of statutory law. The State, from 1959 until 1978, did not segregate any of the lands. Instead, they commingled the lands and the revenues therefrom. At present, the Office of Hawaiian Affairs has the State government in court trying to get their revenues; the people still have not received any grants, acreage, from the ceded lands trust. That is still being withheld at this time. There was a very important letter that was sent by the Department of the Interior to the Hawaii Advisory Committee on Civil Rights in 1979, which I have appended as appendix "B" to my testimony. This letter deals with Federal obligations under section 5(f) trust. In the Department of the Interior's own words, they have a trust obligation to enforce any breaches. This is one area that is particularly of concern to me.

The truth at this point is that native people have lands; but they are not able to go into a court of law to enforce or protect their rights. This is something that we look to Congress to give us standing to achieve. We attempted to get legislation through the State house and senate this time around; I carried it myself. We were not able to get the legislation through the house. We were not able to even get a hearing.

I would like to conclude by simply summing up the State now with regards to this trust. The Hawaiian Home Lands Trust—we have only 187,000 acres; there were 39,000 acres settled by the beneficiaries. We have not been able to do an audit—financial audit—since 1972. We have 7,800 Hawaiians on the waiting list.

With regard to the ceded lands, we are unable to go to a State or a Federal court outside of Washington, DC, to have our rights protected.

I think that if we take a look at the State's inaction with regards to the recommendations of the State-Federal task force, and also to the current litigation going on between OHA and the State, it is clear that the trust mechanism is not working in this State. For the Hawaiian home lands, I think we have to marshall the assets. We recommended looking at public authority's advice. We would need the help of Congress to achieve that.

But for the ceded lands trust, I feel that the time has come to break this trust. I feel that Congress needs to work with the native communities to create some form of a corporate entity whereby the native people would be able to receive title and a portion of the revenues that is owed to them, so that the people can exercise some form of self-determination.

Thank you.

[The prepared statement of Ms. Trask follows:]

INTRODUCTION

Opponents of reparations argue that the primary issue involving reparations is whether the hawaiians had an exclusive "moral" right to inherit lands from the government of Hawaii. In pursuing an answer in the negative, proponants of this position claim that under the doctrine of 'aboriginal title', and 'recognized title' hawaiians have no claim to compensation for lands lost. This position is untenable and relies for purposes of analysis on legal concepts which evolved as a result of America's relationship to native-american indians. Hawaiians are not Indians. The claim of the Hawaiian people to reparations must be viewed in light of positive law. This is true by virtue of the fact that property interests are created and maintained by positive law, constitutions, statutes, regulations and case law. Consequently, it is to positive law that we must look to resolve the issue of reparations.

"Aboriginal title" is an American legal concept defining a set of legal relationships among the U.S. government, individual non-Indians, and various Indian tribes living in the United States but living apart from white American society. Under the doctrine of "aboriginal title" the land on which an Indian tribe was living was owned in fee simple absolute by the United States government. This fee simple ownership arose initially from discovery and occupation of the land by white Americans or by subjects of a European power which subsequently transferred their claim to the U.S. Johnson and Grahams' Lessee v. McIntosh, 8 Wheat. 543, 5led. 681 (1823).

"Recognized title" is similar to aboriginal title except that the government owes compensation under the fifth Amendment for taking land held by recognized title. "Recognition" means that Congress as sovereign has granted an Indian tribe the right to permanently use and occupy certain land. The grant is to the tribe as a corporate entity, not to the individual Indians. Inupiat Community v. U.S., 680 F.2d 122, 128 (Ct. Cl. 1982); Sac & Fox Tribe of Indians v. U.S., 161 Ct. Cl. 189, 197 (1963).

Native Hawaiians have never been tribes. Native Hawaiians were not conquered nor were their lands taken by discovery and occupation. Consequently, the American legal doctrines of aboriginal title and recognized title are inapplicable to the case of Hawaii.

When lands are taken by discovery and occupation, the defeated sovereign and its people loose all property rights to the conquered domain. This is not the case when cession of domain occurs.

"Ceded territory forthwith comes under the complete and absolute sovereignty of the nation to which it has been ceded, and the allegiance of its inhabitants and the duty of protection to them devolve in the new sovereign. While the allegiance of the inhabitants of the ceded territory changes, their private rights, such as rights of property, are generally unaffected by the transfer, although the new sovereign may prescribe compliance with formalities as a condition of recognizing titles. The existing private law continues until altered by the new sovereignty, but not always the public law." 48 C.J.S. International Law §22. It is a historical fact that Liliuokalani and later the Republic of Hawaii ceded the sovereign domain to the United States.

What became of the property rights of the people of Hawaii after cession? Did the United States ever 'recognize' title to real property in the native people? And if so, how was title conveyed? In the years following cession, how did the United States interpret its duty to protect the inhabitants (native or otherwise) of Hawaii?

It is in this light that the question of reparations must be viewed.

The history of Hawaii contained in the documents of Annexation and statehood and federal and state statutory law indicate that the United States was well aware of the powers and obligations it assumed upon accepting the cession of the Kingdom and the Republic. After cession, and until statehood was granted in 1959, the ceded territory was under the complete and absolute sovereignty of the Federal government. When America finally recognized title in the State of Hawaii, it prescribed that the State as part of the compact of its admission into the union comply with certain families, namely that the state accept certain trust obligations relating to Hawaiian Home Lands and the ceded lands. These trust obligations were owed not only to the public, but to the native Hawaiian which Congress had a duty and obligation to protect.

Subsequent to annexation, the United States Congress as sovereign created two trusts by which it recognized the property interests of the native people. The first of these trusts was created by the Hawaiian Homes Commission Act in 1920 (hereinafter HCCA), and carried forward to statehood in Section 4, Pub L. 86-3. These trust lands (approximately 180,000+ acres statewide) were and are currently reserved for the use and occupancy of native-hawaiians as defined in the HHCA. The second trust which evolved directly as a result of cession is contained in section 5(f) of the Admissions Act, Pub L 86-3, 73 Stat 4. This second trust names the native and the public as beneficiaries to over 1.4 million acres of state land and the revenues and proceeds therefrom.

Congress encumbered the lands patented to the State of Hawaii in trust because the Republic of Hawaii had ceded these lands in trust to the United States with the beneficial interest in the people of Hawaii. The Treaty of Annexation, Negotiated in 1897, the Resolution of the Senate of Hawaii Ratifying the Treaty of Annexation of 1897 adopted on September 9, 1897, and the Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States (the Newland Resolution) all provided that the revenues and proceeds from the ceded properties shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes (emphasis added). Lorrin A. Thurston, (Editor) The Fundamental Laws of Hawaii, Honolulu. The Hawaiian Gazette Co., 1904 p. 244-251.

I. POSITIVE LAW REGARDING THE EMERGENCE OF THE CEDED LAND TRUST[1]

The public trust provisions of Section 5(f) of the Admission Act originated during the first session of the Eightieth Congress in 1947, prior to this time the only trust was the Hawaiian Homes Commission Act, 1920.

The drafter of the public trust language was the Department of the Interior. It was referred H.R. 49, A bill to enable the people of Hawaii to form a constitution and State government and to be admitted into the Union on an equal footing with the original States, after its introduction in the House of Representatives. Copies of this bill was also forwarded to the Department of War and the Department of Navy for comment. Other identical bills were H.R. 50, H.R. 51, H.R. 52, H.R. 53, H.R. 54, H.R. 55, H.R. 56, H.R. 579, H.R. 1125, and H.R. 1758.

The War Department expressed no opinion on the bill. The Navy Department saw no objection. Both departments expressed interest in maintaining the security of military installations for national defense purposes.

The Department of the Interior submitted an extensive list of proposed amendments, including the trust language of Section 5(f). On Wednesday, March 19, 1947, the House Committee on Public Lands adopted the amendments proposed by the Department of the Interior. The trust language proposed by the Department of the Interior became a part of every statehood bill after 1947.

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[1] Portions of this section are exerpts taken from Hawaii Ceded Land Trusts, Mitsuo Uyehara, Hawaiiana Almanac Pub. Co., 1977, with the permission of the author.

Although the trust language continued unchanged from 1947 to 1959, the importance changed considerably. In 1947, the Department of the Interior through its Bureau of Land Management was to administer all government lands in Hawaii, except for 180,000 acres which was to be held by the State of Hawaii in trust. This 180,000 acres was less than the land set aside for the Hawaiian Homes Commission Act program. The transition from 180,000 acres to virtually all lands in Hawaii occurred during the Eighty-fourth Congress in 1955.

The patenting of lands to the State of Hawaii in trust limits the use of such lands by the State. Although the purposes for which the State of Hawaii may use the lands, proceeds and income coincides to a substantial degree with unrestricted public lands, the specification of one of the purposes to be "for the betterment of the conditions of native Hawaiians," adds a significant dimension to such trust lands because native Hawaiians are also beneficiaries under Section 4 of the Admission Act providing for continuation of the Hawaiian Homes Commission Act programs. Under the Hawaiian Homes Commission Act programs, the proceeds and income from available lands can be used only to carry out the provisions of said Act, whereas under Section 5(f) of the Admissions Act, the native trust is one of five purposes.

The clause "for the betterment of the conditions of native Hawaiians" in Section 5(f) of the Admission Act indicates that Congress forsaw the emergent demands of native Hawaiians for reparation or settlement of their claims. In the Indian Claims

Commission Act (1946) and the Alaska Native Claims Settlement Act (1971). Congress had provided for direct settlement with the people affected.

In the case of Hawaii, Congress can be said to have delegated the task to the State legislature under Section 5(f) of the Admission Act while reserving to itself the obligation to enforce the State's compliance. It is to be noted that the language of Section 5(f) trust was first incorporated into the Hawaii statehood bill in 1947, just a few months after the enactment of the Indian Claims Commission Act in 1946.

The primary claim to Congress in the context of §5(f) focus on the fact that the United States has failed to protect the trust or ensure that the State of Hawaii would manage same "for the betterment of conditions of native Hawaiians. The United States and the State of Hawaii are the assignees of the spoils resulting from the abrogation of the Hawaiian monarchial system. The bulk of the lands ceded to the United States by the Republic of Hawaii have been patented to the state of Hawaii in trust, and the United States has not enforced the trust or required that the State comply with trust provisions.

A. Federal Obligations Re: Ceded Land Trusts.

In October 1980, the Hawaii Advisory Committee to the U.S. Commission Civil Rights published a report entitled Breach of Trust, Native Hawaiian Homelands. The position of the United States Department of Interior regarding the federal obligation under Section 5(f) of the Admissions Act was transmitted by letter dated August 27, 1979 and reads in pertinent part as follows:

> "Under section 5(b) of the act, title to the Hawaiian home lands held by the United States for the benefit and rehabilitation of native Hawaiians under the Hawaiian Homes Commission Act, 1920, was transferred to the state. Under section 5(f) of the act, these lands, as well as the proceeds and income therefrom, are to be held by the state in trust for the betterment of the conditions of native Hawaiians as per the provisions of the Hawaiian Homes Commission Act, 1920. See *Keaukaha-Panaewa Community Assoc. v. Hawaiian Homes Commission*, 588 F.2d 1216, 1218, n. 2 (9th Cir. 1978) (petition for certiorari filed, No. 78-1539, April 9, 1979, 47 U.S.L.W. 3684). Use of the home lands for any other object "shall constitute a breach of trust for which suit may be brought by the United States." Hawaii Admission Act, §5(f). The answers to your specific questions with respect to these provisions are as follows.
>
> (a) Section 5(f) of the Hawaii Admission Act confers enforcement and litigation authority on the United States. The Department of Justice is responsible for filing and prosecuting litigation on behalf of the United States; the Department of the Interior does not have independent litigation authority. 28 U.S.C. 516 (1976 ed.). With respect to legal matters relating to the powers and duties of the Secretary of the Interior or laws administered by the Department of the Interior, the Office of the Solicitor is responsible for making recommendations to the Department of Justice concerning the initiation of litigation. Although section 5(f) does not expressly refer to the Secretary of the INterior as the officer responsible for enforcing the trust, it is the Department's position that given the Secretary's longstanding involvement with Hawaiian home lands under the Hawaiian Homes Commission Act, 1920, this Department would be responsible for recommending to the Department of Justice that possible breaches of trust be investigated and that litigation to enforce the trust under section 5(f) be initiated where necessary.
>
> (b) The use of the word "may" in section 5(f) suggests that the authority of the United States to prosecute breaches of the trust under this section is discretionary. In the area of the United States' relationship with Indians and Indian tribes, which may or may not be analogous to the relationship between the United States and native Hawaiians under section 5(f), some courts have suggested that the federal government's

trust responsibility requires the United States to sue on behalf of Indians or Indian tribes to protect Indian rights under federal law, or be liable to the Indians for breach of trust for any loss resulting from the failure to sue. See United States v. Oneida National of New York, 477 F.2d 939 (Ct. Cl. 1973); Mason v. United States, 461 F. 2d 1364, 1372-73 (Ct. Cl. 1972), rev'd., 412 U.S. 391 (1973); cf. Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 388 F. Supp. 649, 663, n. 16, 665 (D. Me. 1975), aff'd., 528 F. 2d 370, 375, 379 (1st Cir. 1975). As the potential liability of the United States may be involved, however, the Department cannot take a position on this issue outside the facts of a particular case in which the question is presented.

(c) This Department would recommend prosecution of any breach of trust which it found to be supported by the facts and legally meritorious.

(d) We have been unable to find any instance in which any action has been filed by the United States for breach of trust under section 5(f).

(e) The Ninth Circuit in construing section 5(f) recently stated: ". . . the state is the trustee . . . *** The United States has only a somewhat tangential supervisory role under the Admission Act, rather than the role of trustee." Keaukaha-Panaewa Community Assoc. v. Hawaiian Homes Commission, supra, 588 F. 2d at 1224, n. 7. It is true that the state, rather than the United States, holds title to the Hawaiian home lands for the use and benefit of native Hawaiians, while the United States' trust responsibility with respect to Indian lands is due in large part to the fact that the United States holds legal title to the land in trust for Indian tribes and individual Indians. Nonetheless, it is the Department's position that the role of the United States under section 5(f) is essentially that of a trustee. Prior to statehood, the United States itself held title to the home lands in trust for native Hawaiians. The terms of that trust were defined by the provisions of the Hawaiian Homes Commission Act, 1920. Although the United States transferred the lands and the responsibility for administering the act to the state under the Admission Act, the Secretary of the Interior retained certain responsibilities, discussed below, which should be considered to be more than merely ministerial or nondiscretionary. The United States further provided that no substantive changes in the act, and thus in the terms of the trust itself, may be made without the consent of Congress and also retained authority to prosecute breaches of the trust. Taken together, the responsibilities of the

> federal government are more than merely supervisory and the United States can be said to have retained its role as trustee under the act while making the state its instrument for carrying out the trust. Cf. Act of August 4, 1947, c. 458, §1, 61 Stat. 731, 25 U.S.C. 355 note (1976 ed.); Springer v. Townsend, 336 F. 2d 397 (10th Cir. 1964) (state court, in approving, pursuant to federal statute, conveyance of restricted Indian land, acted as federal instrumentality)."

Appendix A - Breach of Trust
Native Hawaiian Homelands,
October 1980. Hawaii Advisory
Committee to the United States
Commission On Civil rights.

B. Historical Mismanagement of 5(f) Trust And Current Controversies Surrounding Same.

The State of Hawaii provided for a Public Land Trust under section 2, Act 32 of the First State Legislature (1962) to which was appropriated all funds from the sale or lease or other disposition of public lands under Section 5(f) of the Admission Act which was codified as section 171-18 of the Hawaii Revised Statutes.

Section 171-18 provides for segregation of funds derived from public lands into Section 5(f) and non-trust fund accounts. Further segregation was mandated b the First State Legislature (1962) by providing that sales, interests, and rents from public lands be set apart in a Special land and development fund codified as section 172-19 of the Hawaii Revised Statutes.

The apparent conformance of the two sections to the trust requirements of the Admission Act are overshadowed by fundamental errors inherent in the sections as a consequence of the definition of public lands codified in section 171-2 of the Hawaii Revised Statutes.

The definition of public lands contained in HRS §171-2 does not distinguish between lands under Section 5(f) and those which are not. In the first category are Hawaiian Homes Commission available lands and non-Hawaiian Homes Commission lands. The Hawaiian Homes Commission available lands can only be used to promote the commission's programs. The non-Hawaiian Homes Commission lands can be used to promote all Section 5(f) purposes as well as Hawaiian Homes Commission purposes.

In the second category of public lands are those obtained by the State of Hawaii under condemnation or otherwise and paid for by general fund revenues.

The mergence of both categories of land in the definition of public lands clouds the fiduciary responsibilities and liabilities inherent in such lands. Thus, moneys from the sales, interest, and rentals from public lands were deposited in the Special land and development funds and not in the Public Trust Ceded Land Proceeds and as distinguished from general fund revenues as may be seen on page 23, although proceeds from sales of Section 5(f) trust lands are trust moneys. Although section 171-19 does distinguish between trust and non-trust moneys, it is only in passing or caution amounting to a distinction without operational difference, etc.

A crucial problem is whether the state has conformed to the letter and spirit of the trust. Since the State first engaged the trust in 1961, it has transferred to the Department of Education all Section 5(f) trust moneys, excluding the Special land and development fund moneys, and then removed an identical sum from the Department of Education to the general fund. In substance, the State of Hawaii commingled the trust funds with the general funds. The language of the law did not change from 1961 to 1977 (as section 97 of House Bill Number 892, H.D. 1, Ninth State Legislature).

The selection by the State of the Department of Education appears to conform to the letter of Section 5(f), but the specification of the second purpose for the betterment of the conditions of native Hawaiians is an extraordinary purpose. The mere selection of the Department of Education would not by itself fulfill the spirit of Section 5(f). If Congress had left out the second clause or purpose, the enumerated purposes would be the normal public purpose clauses, and native Hawaiians would derive benefit in the normal course as any non-native Hawaiian. But, Congress had pulled out of the general public native Hawaiians for special consideration. To conform to Section 5(f), the State may elect the Department of Education or others, but it must also select the native Hawaiians. The accurate selection of the purpose is important because the failure of the State to conform to the letter and spirit of the purposes set forth in Section 5(f) "shall constitute a breach of trust for which suit may be brought by the United States" under said Section 5(f) of the Admission Act.

In 1977 native Hawaiians petitioned the state legislature to segregate the 5(f) lands and revenues and to surrender to a native corporation a proportionate share of the land and monetary assets of the trust (House Bill 1469 Ninth Legislature 1977, State of Hawaii.) In response to the above, the State created in

1978 a new bureaucratic branch of government, the Office of Hawaiian Affairs, which would receive 20% of the revenues of the ceded land trust and none of the public lands. Hawaii Revised Statutes, Chapter 10, Section 10-13.5.

To date, the Office of Hawaiian Affairs has been unable to collect 20% of the revenues of the ceded lands and is pursuing litigation to recover same from the State Department of Transportation. (Appendix D hereto).

There has been no inventory of the public lands which constitute the rest of the 5(f) trust, or of the appurtenances thereto (i.e. water, geothermal resources, manganese modules, and dredging).

Although the United States Congress intended that the ceded lands and revenues therefrom be utilized "for the betterment of conditions of native Hawaiians" the State of Hawaii has refused to reserve any public land for native use and continues to violate existing state law by refusing to segregate 20% of the ceded land revenues for use by the Office of Hawaiian Affairs.

The State of Hawaii has over the course of the last 6 years, actively pursued a policy of evicting native Hawaiians as "squatters" from state lands. The Sand Island, Kukailimoku Village, and Makua Valley land controversies demonstrate that the State does not acknowledge any land rights of native beneficiaries. In the above instances, native beneficiaries of the ceded land trusts were arrested and prosecuted under criminal statutes as trespassers or for obstructing government operations.

Despite the sordid and controversial nature of the states management of the 5(f) trust, the United States has failed and continues to refuse to initiate suit pursuant to §5(f) against the State of Hawaii for breach of trust or to seek to have the state segregate 5(f) lands and revenues and transfer same to native beneficiaries or corporations.

II. POSITIVE LAW RELATING TO THE HAWAIIAN HOMES TRUST

As has been demonstrated, the fundamental documents of cession and annexation preserved the property rights of the "inhabitants" of the islands. The United States made no distinction between the rights of the native and the general population until 1920 when Prince Jonah Kuhio Kalanianaole petitioned Congress to adopt special legislation to protect the native hawaiian.

The following year Congress set aside approximately 203,500+ acres of public lands in the Territory of Hawaii to be utilized in the rehabilitation of Native-Hawaiians. HHCA 1920 as amended.

The intent of Congress was to create a class of lands, separate and distinct from other public lands; to prevent the alienation of such lands; to preserve said lands for residential and farming purposes by Natives, to guaranty the Native farmers adequate water and financing for their farms. H.R. Rep. No. 839, 66th Cong., 2d. Sess. 4 (1920).

In order to protect Trust assets and to accomplish the above goals, specific provisions of the Act were adopted which vested exclusive control over the use of the lands in the Hawaiian Homes Trust. Other provisions specifically divested federal and later state officers of any power over these lands. Section 206 HHCA. Protective provisions were also enacted which provided that land exchanges between the Commission and other agencies or departments be on an equal value basis with the approval of the Secretary of the Interior. Exchanges could only be consummated in order to allow the Commission to better consolidate its assets, or to better serve the purposes of the Act.

A. Hawaiian Homes Act Inclusion into Admission Act

Upon the granting of statehood, Congress specifically provided that any amendment to the HHCA which would alter the class of the beneficiaries thereunder (Native-Hawaiians of 50% blood), or diminish benefits to said class would require Congressional approval. The United States also reserved to itself the exclusive authority to bring suit for breach of trust against the state if the state failed to faithfully perform its trust obligations. Section 4 Public Law No. 86-3.

The U.S. Department of the Interior was well aware of the federal obligations owed to the native population when it requested in 1947 that certain amendments be made to House Resolution 49.

The Department, while conceeding that the public land laws of the continental U.S. not be applied, felt strongly that the public-land policies of the Federal Government should be applied to the Admission of Hawaii. This, according to the department would be accomplished by integrating the proposed amendments suggested by the Secretary with H.R. 49.

> "The proposed amendments would accomplish this result by placing Hawaii on equal footing with the other States in matters of principle, while leaving undisturbed the policies which the Congress has worked out to meet such special Hawaiian situations as the protection of the native population." (emphasis added)

In line with the above policy considerations, the Department of the Interior proposed 12 amendments to H.R. 49.

Amendment Number 4, related to section 3 proviso 5 of H.R. 49. The comments to the amendment read in part:

> ". . . it is questionable whether the safe guards here intended to be afforded the native Hawaiians for whose benefit the Hawaiian Homes Commission Act, 1920 was enacted by the Congress would be enforceable in the form in which the paragraph now stands (see *Coyle v. Smith*, 221 U.S. 559. In order to protect adequately these benefits. The title to the Hawaiian Home Lands should be retained by the United States, and the paragraph should be recast as a compact by the State to carry out the purposes of the Hawaiian Homes Commission Act, 1920, in such a manner as to prohibit the

obligation thus assumed by the State being altered in substantive particulars without the consent of the United States" (emphasis added). U.S. Congress, Statehood for Hawaii, 1947, p. 265-268, p. 9.

B. Historical Mismanagement Of Hawaiian Homes Trust

From 1920 until 1959, the United States, by its territorial agents, maintained exclusive control over the management of the lands, funds and programs created by the HHCA. With statehood, the Department of Hawaiian Home Lands (DHHL) assumed primary obligation for management of the lands and programs of the trust. This was required as part of the compact between the State of Hawaii and the federal government. Public Law No. 86-3, Section IV, 73 STAT.4.: The Hawaii Constitution Article XI Subsection 2, 1959, renumbered Article XII Section 2 1978; Ahuna v. Department of Hawaiian Home Lands. 64 Haw. 327 (1982); H.R. Rep. 839, 66th Cong., 2d Sess. 4 (1920).

Because the United States (through the Department of Interior and the United States Congress) reserved certain authority over land exchanges, the amending procedure, and causes for breach, it did not surrender complete management and authority to the State. This supervisory role of the United States has been interpreted b the Department of Interior as a trust role. According to the Department of Interior, its role with regard to these lands is non-discretionary and is more than just ministerial. Letter of August 27, 1979, Phillip Montez, Director, Western Regional Office of the United States Commission on Civil Rights from Frederick Ferguson, Deputy Solicitor, U.S. Department of Interior. (Appendix A)

1. Federal and State Obligations Under the Hawaiian Homes Commission Act of 1920 As Amended.

The United States, by its creation of the Hawaiian Homes Commission Act in 1920, undertook a trust obligation on behalf of an aboriginal people. The trust responsibilities of the United States and its successor the State of hawaii, are measured by the same strict fiduciary standards applicable to private trusts. Ahuna v. Department of Hawaiian Home Lands, *supra*. Consequently, the responsibilities of the United States include an obligation to administer the trust solely in the interest of the beneficiary, and to use reasonable care and skills to make the trust property productive.

Where the trustee breaches any duty owed to the beneficiary or to the preservation of the trust, the trustee is liable to make reparations and restitution to the trust for any and all of the losses suffered as a result of his breach. Restatement (2nd) of Trust (1959); G. Bogart, Trust and Trustees (revised 2nd Edition, 1978).

From 1920 to 1959 the above trust responsibilities were exclusively the fiduciary obligations of the United States of America. Upon the granting of statehood, these obligations became and remained the shared obligations of the United States and the State of Hawaii.

2. Management of the Trust from 1920 to 1959 By The United States.

a. Initial Discrepancies in Acreage.

From its inception, the land inventory of the trust was inaccurate as to actual acreage. Under Section 203 of the Act, approximately 203, 500 plus acres of land in various districts were to be set aside for the purposes of homesteading. Recent land inventory figures indicate that only 188,000 acres were actually set aside for use under the Act. This 20,000 plus acre discrepancy is due largely to the fact that no plat maps accompanied the Act at the time of its passage. Subsequently, territorial agents utilized ahupuaa boundaries as a guide to division of lands on plat maps that were later drawn. (Attachment A, B, C, D. Appendix 15, Task Force Report, pgs. 333 - 343.

Congress should redress this problem by providing that surplus lands in the State of Hawaii be surrendered to the Department of Hawaiian Home Lands to make up the difference.

b. Executive Orders & Governor's Proclamations.

By nine territorial governors' proclamation and 28 territorial governors executive orders, the management, use and control of over 30,000 acres of land were transferred to various territorial departments for public, federal and other uses. No compensation was ever made to the trust for these uses, nor were any lands of equal value ever exchanged for these withdrawals as required by the Hawaiian Homes Commission Act.

Many of these illegal withdrawals directly benefited various departments of the United States. (See Appendix 12, Attachments A and B, State Federal Task Force on Hawaiian Homes Commission, Report to Secretary of Interior and Governor of Hawaii, August, 1983, pgs. 283 - 291, hereinafter Task Force Report.)

Because of these withdrawals, the land assets of the trust became intermingled with those of the public lands. As a consequence of these land withdrawals and the historical failure of the United States to achieve land exchanges to replace these lands, numerous public facilities, including park facilities, schools, etc. have been constructed on Hawaiian Home Lands. Because no compensation was ever paid to the department for the uses of these lands, the trust has been deprived of many millions of dollars of revenues.

c. Withdrawals under "Exceptions" to the Act.

Section 203 of the Hawaiian Homes Commission Act granted large acreages of lands for homesteading purposes, subject to certain reservations. These lands that were excluded from the grant were: 1) existing Forest Reserves, 2) Cultivated sugar cane land; 3) lands held under certificate of occupation, homestead lease or right of purchase lease, or 4) lands held under homestead agreement. No inventory was ever compiled to determine the exact amount of acreage held under the above exclusions or to locate these lands within the various grants.

Subsequent to the passage of the act, territorial agents withdraw lands allegedly subject to the above exceptions. Evidence indicates that many of the lands so withdrawn were not previously held under the exclusions and reservations mentioned above.

Note: The State Federal Task Force was not able to determine the exact number of acreage lost in this manner. Further inquiry would be needed in this area.

d. Condition of the Trust Upon Surrender To The State of Hawaii In 1959.

No inventory or survey of lands was ever made by the United States government during the time that it administered the Hawaiian Home Lands. No inventory of mineral or other trust assets was ever made by the United States Government during this time. No inter-agency land management division was ever created by the United States government during the time that it administered the trust.

Upon the granting of statehood, the United States surrendered the management, use and control of the lands withdrawn from the trust to various State agencies, other than the Department of Hawaiian Home Lands. No attempt was ever made to marshall the assets of trust or return lands of equal value through the land exchange procedure. The vast bulk of these lands remain outside the management of the Department of Hawaiian Home Lands at the present time.

3. Management of Trust by State of Hawaii.

a. Executive Orders & Governor's Proclamation.

Subsequent to the granting of statehood, the State of Hawaii continued to enjoy free use of the lands withdrawn by its territorial predecessors through the devices of Executive Orders and Governor's Proclamation. The new state agencies which utilized these lands for public purposes did not pay compensation to the Department of Hawaiian Home Lands.

Precedents set by the United States for withdrawals under Executive Order were continued into statehood. Since 1959 the State of Hawaii has, by five Executive Orders (No. 2262, No. 2333, No. 2493, No. 2494, No. 2009) withdrawn 2.3 acres of Hawaiian Home Lands for public uses. No compensation was ever paid for the use of these lands, nor were land exchanges consummated to replenish the Department of Hawaiian Home Lands for lands withdrawn.

The State of Hawaii has never withdrawn Hawaiian Home Lands by governor's proclamation. (See Appendix 12, Task Force Report, pgs. 265 - 282.)

b. Takings.

In several instances the State of Hawaii has taken land summarily without documentation. These lands include 66 acres in Nanakuli, Oahu, 6 acres in Keaukaha, and 2.64 acres in Waimanalo, Oahu. The above takings were for use by the Department of Education as public schools. No compensation was ever paid for these uses nor were land exchanges consummated for these withdrawals. Evidence of these takings has surfaced as a result of the DHHL's review of initial plat maps and diagrams. It is likely that other examples will surface as work proceeds in this area. The amount of acreage taken in this manner has yet to be determined. (See Appendix 12, Attachment F, Task Force Report p. 300).

c. Leasing And Other Practices.

Until 1964, the Department of Land and Natural Resources (DLNR) was authorized to general lease lands not needed by the DHHL for purposes of the act. Under relevant State statutes, rental value for such lands was to be set by appraisal, but might be nominal if direct benefit to the DHHL or its lessees was shown. In 1964 the DHHL was authorized to general lease its own lands for the first time, and the practices of DLNR leasing abated.

From 1959 to 1964 the Department of Land and Natural Resources issued numerous general leases to state, federal and other private persons for nominal or no consideration. The majority of these leases did not benefit the DHHL or its beneficiaries. (See annual reports of the DHHL and the Department of Land & Resources for relevant years, and Appendix B hereto).

As a consequence of the above actions, the trust was deprived of needed revenues, and many thousands of acres of land were encumbered by non-beneficiary uses.

A cursory review of the outstanding leases, licenses, rights of entry and permits maintained and managed by the DHHL verifies that the vast bulk of these lands are being utilized by non-beneficiaries to the detriment of the DHHL and its beneficiaries. (See Appendix 12, Task Force Report, p. 265 - 282.)

d. Inventory And Management.

The State of Hawaii has never conducted a comprehensive survey to identify and locate the Department of Hawaiian Home Lands, nor has it inventoried any mineral, water or other assets that are appurtenance to those lands.

A review of the history of the Department of Hawaiian Home Lands illustrates that since 1960 the Department has attempted numerous time to achieve land exchanges, in order to rectify past historical problems. None of these land exchanges have been successful. The finding of the federal auditor that the State of Hawaii, by and through its various agencies has not allocated any priority status to the solution of this problem has not been refuted.

Until 1975, neither the State of Hawaii nor its predecessor, the United States, had created a land division within the Department of Hawaiian Home Lands, to facilitate management of its vast land holdings. As a consequence of the above, the Department continues to be plagued by management problems.

There is no cohesive or integrated administrative system within the department. The functions of the various divisions of the department (Income and Maintenance, Legal, Land Division, etc.) are not clearly defined. Consequently, the various inter-departmental divisions of the DHHL do not interface efficiently. There is a need for management audit and expertise to streamline the administrative capacity of the department in order to facilitate and standardize inter-departmental practices. Until this is achieved, the DHHL will be unable to service its lessees or process its applicants.

At present, certain land management policies followed by the department are not based on the provisions of the Act. Consequently, 80% of the lands that had been leased by the DHHL has been leased to non-beneficiaries. The DHHL has been following a practice of generating revenues for its own administration by leasing homestead lands to non-beneficiaries. All management policies of the practices of land management followed by the department are to maximize benefits to the lessees, and within the constraints of the purposes of the Act.

Many of the problems relating to the failure of the department to complete an inventory and streamline its management system and practices are directly related to a lack of funding. Although a 1978 amendment passed at the Constitutional Convention provided that the Legislature must fund the DHHL, the department has been unsuccessful in obtaining funds from the Legislature.

e. Land Exchanges: United States and State of Hawaii Involvement.

Section 204 of the Hawaiian Homes Commission Act allows the DHHL to exchange available land for private or public lands of equal value. This can only be done in order to allow the DHHL to consolidate its holdings or to better effectuate the purposes of the act.

There have been seven land exchanges under the provisions of Section 204 of the Act. Two were approved by Congressional legislation and five have been approved by the Secretary of Interior. Seven approved exchanges involved 3,021 acres of Hawaiian Home Lands. For these lands, 6,924 acres of other public or private lands were exchanged. The last such exchange was approved in 1967. Only 19.5% of the land (1,384 acres) received by the DHHL in these exchanges, is currently used for homestead purposes. Seventy-five percent of the lands (5,193 acres) are under general leases and revocable permits that generate $30,000 in annual revenues. The propriety of 3 of these 7 exchanges are questionable. Two of these exchanges was accomplished on an acre for acre basis and were not supported by appraisals. A third exchange involving a total of 268 acres of home lands on the Islands of Hawaii, Kauai, Molokai and Oahu occurred in 1966. For these lands the DHHL received 5,007 acres of public lands on the Island of Hawaii. The values of the lands to be conveyed by the DHHL were based on taxed assessed values in the year each area was available for state use (1962 through 1963), the values of the lands to be conveyed by the state were based on the 1966 tax assessed values. The state retained the mineral rights to the state lands that were exchanged with the DHHL.

There is no evidence available that the DHHL obtained independent appraisals of the land exchange nor was there any documentation to show that retention of the mineral rights was considered in the tax assessed value.

Although all seven of these exchanges were approved either by Congressional action or by the Department of Interior, there is no evidence that the DHHL or the United States made inquiry as to the purpose of these exchanges. It is further evidenced that these exchanges did not consolidate the holdings of the DHHL or allow the Department to better effectuate the purposes of the Hawaiian Homes Commission Act (see Audit Report, Office of Inspector General, U.S. Department of Interior, September, 1982).

Summary of Current Status of The Hawaiian Home Lands Trust

Land: The KAEO Report on current land holdings of the DHHL indicates that 187,500+ acres should be in the inventory of the DHHL. Of the above, only 39,768 acres are used by beneficiaries. The remaining lands are utilized by non-beneficiaries through illegal withdrawals or are encumbered by leases, licenses, etc.

Revenues: Undetermined. A complete financial audit of revenues has not been performed since 1972.

Minerals, Water, etc.: Undetermined. No inventory has been made to date.

Beneficiaries on waiting lists: As of April 30, 1983, 7,830 native Hawaiians, see Appendix C hereto.

CONCLUSION.

The fundamental documents of cession and statehood provide the legal chronology whereby the property interests of the 'inhabitants' of the islands of the Hawaiian Kingdom and Republic devolved to the native trusts. When the record is viewed in light of the issue of reparations, the primary obligation of the United States is to repair and make whole the two trusts created by Congress for the native Hawaiian as defined in the Hawaiian Homes Commission Act 1920 as amended.

The findings of the State-Federal Task Force on the Hawaiian Homes Commission Act dated August 1983 summarized herein clearly indicate that the United States personally mismanaged the assets of the Hawaiian Homes Trust from 1920 to 1959. Consequently, the federal government must make restitution and pay compensation for its own breaches of trust as indicated therein. The United States must begin to take affirmative action to insure that the native beneficiaries are settled on their lands as suggested by the report of the State-Federal Task Force dated August, 1983 submitted herewith.

With regard to the current controversy surrounding the ceded land trust. The Federal Government should undertake immediate legal action to achieve the identification and segregation of the ceded lands and the revenues therefrom, and should act with all due speed to create a statutory provision whereby the native beneficiaries of the trusts can initiate suit for protection of the lands and monies which Congress has granted to them. Until the native beneficiaries receive their entitlements and have been granted a right of action to enforce their equitable rights, they will continue to be deprived of their civil and property rights.

It is evident that the State of Hawaii has historically commingled the assets and revenues of the ceded land trusts and has resisted any and every attempt of the native beneficiaries to secure lands or monies from said trust. In view of the findings and recommendations of the State/Federal Task Force on Hawaiian Home lands and the subsequent failure of the State to implement and pursue the recommendations therein it is clear that the State of Hawaii will not adhere to its trust obligations.

In 1977 the native beneficiaries sought to establish a corporate entity through which they could exercise self-determination. This entity would have provided for regional representation of beneficiaries and would have succeeded to title of 5(f) lands and revenues. The State of Hawaii prevented this legislation from being implemented and by means of the political process created a new state department which would allow the state to continue to withhold the ceded lands and the revenues therefrom from the native beneficiaries. The trust mechanism has proved unworkable and unenforcable. The United States Congress must work in concert with the native beneficiaries to structure a new mechanism whereby the Hawaiian people will be able to receive title to their lands and determine the course of their destiny.

Appendix A

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

AUG 27 1979

Mr. Philip Montez, Director
Western Regional Office
United States Commission on Civil Rights
312 North Spring Street, Room 1015
Los Angeles, CA 90012

Dear Mr. Montez:

The Secretary has asked me to respond to your letter of August 1, 1979, regarding the responsibility of the United States for enforcement of the provisions of the Hawaiian Homes Commission Act, 1920, and the Hawaii Admission Act of 1959 relating to the Hawaiian home lands.

Your first question relates to section 5 of the Hawaii Admission Act, Act of March 18, 1959, Public Law 86-3, §5 , 73 Stat. 5, as amended by Act of July 12, 1960, Public Law 86-624, §41, 74 Stat. 422. Under section 5(b) of the act, title to the Hawaiian home lands held by the United States for the benefit and rehabilitation of native Hawaiians under the Hawaiian Homes Commission Act, 1920, was transferred to the state. Under section 5(f) of the act, these lands, as well as the proceeds and income therefrom, are to be held by the state in trust for the betterment of the conditions of native Hawaiians as per the provisions of the Hawiian Homes Commission Act, 1920. See Keaukaha-Panaewa Community Assoc. v. Hawaiian Homes Commission, 588 F. 2d 1216, 1218, n. 2 (9th Cir. 1978) (petition for certiorari filed, No. 78-1539, April 9, 1979, 47 U.S.L.W. 3684). Use of the home lands for any other object "shall constitute a breach of trust for which suit may be brought by the United States." Hawaii Admission Act, §5(f). The answers to your specific questions with respect to these provisions are as follows.

(a) Section 5(f) of the Hawaii Admission Act confers enforcement and litigation authority on the United States. The Department of Justice is responsible for filing and prosecuting litigation on behalf of the United States; the Department of the Interior does not have independent litigation authority. 28 U.S.C. 516 (1976 ed.). With respect to legal matters relating to the powers and duties of the Secretary of the Interior or laws administered by the Department of the Interior, the Office of the Solicitor is responsible for making recommendations to the Department of Justice concerning the initiation of litigation. Although section 5(f) does not expressly refer to the Secretary of the Interior as the officer responsible for enforcing the trust, it is the Department's position that given the Secretary's longstanding involvement with Hawaiian home lands under the Hawaiian Homes Commission Act, 1920, this Department would be responsible for recommending to the Department of Justice that possible breaches of trust be investigated and that litigation to enforce the trust under section 5(f) be initiated where necessary.

(b) The use of the word "may" in section 5(f) suggests that the authority of the United States to prosecute breaches of the trust under this section is discretionary. In the area of the United States' relationship with Indians and Indian tribes, which may or may not be analogous to the relationship between the United States and native Hawaiians under section 5(f), some courts have suggested that the federal government's trust responsibility requires the United States to sue on behalf of Indians or Indian tribes to protect Indian rights under federal law, or be liable to the Indians for breach of trust for any loss resulting from the failure to sue. See United States v. Oneida Nation of New York, 477 F. 2d 939 (Ct. Cl. 1973); Mason v. United States, 461 F. 2d 1364, 1372-73 (Ct. Cl. 1972), rev'd., 412 U.S. 391 (1973); cf. Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 388 F. Supp. 649, 663, n. 16, 665 (D. Me. 1975), aff'd., 528 F. 2d 370, 375, 379 (1st Cir. 1975). As the potential liability of the United States may be involved, however, the Department cannot take a position on this issue outside the facts of a particular case in which the question is presented.

(c) This Department would recommend prosecution of any breach of trust which it found to be supported by the facts and legally meritorious.

(d) We have been unable to find any instance in which any action has been filed by the United States for breach of trust under section 5(f).

(e) The Ninth Circuit in construing section 5(f) recently stated: ". . . the state is the trustee . . .. * * * The United States has only a somewhat tangential supervisory role under the Admission Act, rather than the role of trustee." *Keaukaha-Panaewa Community Assoc.* v. *Hawaiian Homes Commission, supra*, 588 F. 2d at 1224, n. 7. It is true that the state, rather than the United States, holds title to the Hawaiian home lands for the use and benefit of native Hawaiians, while the United States' trust responsibility with respect to Indian lands is due in large part to the fact that the United States holds legal title to the land in trust for Indian tribes and individual Indians. Nonetheless, it is the Department's position that the role of the United States under section 5(f) is essentially that of a trustee. Prior to statehood, the United States itself held title to the home lands in trust for native Hawaiians. The terms of that trust were defined by the provisions of the Hawaiian Homes Commission Act, 1920. Although the United States transferred the lands and the responsibility for administering the act to the state under the Admission Act, the Secretary of the Interior retained certain responsibilities, discussed below, which should be considered to be more than merely ministerial or nondiscretionary. The United States further provided that no substantive changes in the act, and thus in the terms of the trust itself, may be made without the consent of Congress and also retained authority to prosecute breaches

> of the trust. Taken together, the responsibilities of the federal government are more than merely supervisory and the United States can be said to have retained its role as trustee under the act while making the state its instrument for carrying out the trust. *Cf.* Act of August 4, 1947, c. 458, §1, 61 Stat. 731, 25 U.S.C. 355 note (1976 ed.); *Springer* v. *Townsend*, 336 F. 2d 397 (10th Cir. 1964) (state court, in approving, pursuant to federal statute, conveyance of restricted Indian land, acted as federal instrumentality).

Your second question relates to the duties of the Secretary of the Interior under sections 204(1), 204(4), and 212 of the Hawaiian Homes Commission Act, 1920, as amended. Section 204(1) provides that any "available lands" which were under lease on the date of enactment (July 9, 1921) would not become "home lands" until the lease expired or until the lands were withdrawn from the operation of the lease by the government authorities responsible for public lands. Where such lands were covered by a lease containing a withdrawal clause, the lands could be withdrawn for use as home lands whenever the Commission (now the Department of Hawaiian Home Lands, Haw. Rev. Stat. §26-17) gave notice, with the approval of the Secretary of the Interior, that the lands were needed for the purposes of the act. It is unclear whether any "available lands" which were under lease in 1921 are still under lease. If not, the authority of the Department and the Secretary under this subsection is now obsolete. Under section 204(4), the Department of Hawaiian Home Lands is authorized to exchange title to "available lands" for public lands of equal value in order to consolidate its holdings or better carry out the purposes of the act. This authority is subject, however, to the approval of both the governor of the state and the Secretary of the Interior. Under section 212, the Department of Hawaiian Home Lands is authorized to return "home lands" to the control of the state government, in which case the lands may be held as public lands and disposed of by general lease. All such leases, however, may be terminated if the Department, with the approval of the Secretary of the Interior, gives notice that the leased lands are again required for the purposes of the act. The Secretary's authority under these sections is not merely ministerial or nondiscretionary, but rather calls for independent judgment and must be exercised consistent with the purpose and provisions of the act. The answers to your specific questions with respect to these provisions are as follows.

(a) The Secretary's authority under section 204 and 212 has not been expressly delegated under departmental regulations. In the past, the authority to approve exchange deeds has been exercised either by the Secretary or an Assistant Secretary upon recommendation of the Solicitor. This practice could also be followed under current departmental regulations.

(b) No formal guidelines or procedures have been established to ensure that state activity concerning Hawaiian home lands is approved by the Secretary where required by the act. In the past, the Department has relied upon the appropriate state officials to forward documents requiring secretarial approval to the Department since the Secretary's approval is necessitiated only after initial action by the state agencies. However, since it is possible that the state government may have taken actions with respect to home lands in the past without the required approval of the Secretary, see Keaukaha-Panaewa Community Assoc. v. Hawaiian Homes Commission, supra, consideration will be given to establishing appropriate procedures to ensure that state action is, in the future, submitted for secretarial approval where required under the act.

(c) Departmental records indicate that five exchange deeds have been submitted for approval and approved under section 204(4) of the act since the enactment of the Hawaii Admission Act, as follows:

> Three deeds of exchange between the Department of Hawaiian Home Lands and the State of Hawaii approved by Secretary Udall on April 9, 1962;
>
> One deed of exchange between the Department of Hawaiian Home Lands and the State of Hawaii approved by Assistant Secretary Carver on June 19, 1962; and
>
> One deed of exchange between the Department of Hawaiian Home Lands and the State of Hawaii approved by Secretary Udall on March 16, 1967.

I hope that this information will be helpful to the Commission in its study. If the Department can be of further assistance, please feel free to write Thomas W. Fredericks, Associate Solicitor, Division of Indian Affairs, Department of the Interior, Washington, DC 20240.

Sincerely,

Frederick N. Ferguson

DEPUTY SOLICITOR

APPENDIX B

LEASES, LICENSES, PERMITS, AND RIGHT OF WAYS TO A FEDERAL AGENCY

	LESSEE	LEASE #	TYPE	USAGE	ACREAGE	LOCATION/TMK	TERM	ANNUAL COMPENSATION
1.	USA [illegible]	3752	DLNR Gen. Lease	Comm/Radar Easement	[illegible]	Kamaoa/Puueo Hawaii 9-3-01:10	65 years 12/16/63-12/15/2028	$ [illegible]
2.	USA Army	3849	DLNR Gen. Lease	Training	295.000	Humuula, Hawaii 3-8-01:13	65 years 8/17/64-8/16/2029	1.00 ter
3.	USA Navy	3852	DLNR Gen. Lease	Storage Area	25.686	Kekaha, Kauai 1-2-02:29	65 years 8/20/64-8/19/2029	1.00 ter
4.	USA Navy	3813	DLNR Gen. Lease	Comm/Radar	.282	Nanakuli, Oahu 8-9-06:88	50 years 7/1/64-6/30/2014	1.00 ter
5.	Fed. Aviation Admin.	198	Gen. Lease	Public Service	181.077	Makuu, Kauai 1-5-10:17	10 years 8/1/77-7/31/87	5070.00
6.	US Postal Service	196	Gen. Lease	Public Service	1.000	Hoolehua/Palaau Molokai 5-2-23:02	25 years 7/1/77-6/30/2002	780.00
7.	USA Air Force	203	Gen. Lease	Public Service	363.673	Hoolehua/Palaau Molokai 5-2-06:63	10 years 1/1/78-12/31/87	17460.00
8.	Fed. Aviation Admin.	046	License	Eas/Roads	-------	Waiakea, Hawaii 2-1-13:01	3 years 7/1/79-6/30/8[illegible]	700.00 ter
9.	USA Army Corp of Eng.	104	License	Eas/Roads	-------	Pauahi, Hawaii 6-2-01:12	4 years 8/25/78-12/31/82	1.00 ter
10.	USA Army	008	License	Eas/Roads	-------	Nanakuli, Oahu 8-9-07:1,3,9	3 years 6/1/80-5/31/83	76.00
11.	Fed. Aviation Admin.	047	License	Comm. Facility	.880	Waimanalo, Oahu 4-1-14:15,16	-------	1.00 ter
12.	USA Army	042	R/E Permit	Construction	-------	Waimea/Puukapu Hawaii 6-4-03:15	4 years 8/31/78-8/30/82	---------
13.	USA Army Corp of Eng.	060	R/E Permit	Historical Site Survey	------- -------	Kamaoa/Puueo Hawaii 9-3-01:03	1 year 2/1/82-1/31/83	---------
	TOTAL				879.299 Acres			$

1. License may be renewed at $200.00 annually by US Government.

DLNR MANAGED LEASES, LICENSES, PERMITS, AND RIGHT OF WAYS

LESSEE	LEASE #	TYPE	USAGE	ACREAGE	LOCATION/TMK	TERM	ANNUAL COMPENSATION
USA Navy[1]	3752	DLNR Gen. Lease	Comm/Radar Easement	11.701	Kamaoa/Puueo Hawaii 9-3-01:10	65 years 12/16/63-12/15/2028	$ 1.00 term
USA Army	3849	DLNR Gen. Lease	Training	295.000	Humuula, Hawaii 3-8-01:13	65 years 8/17/64-8/16/2029	1.00 term
USA Navy	3852	DLNR Gen. Lease	Storage Area	25.686	Kekaha, Kauai 1-2-02:29	65 years 8/20/64-8/19/2029	1.00 term
USA Navy	3813	DLNR Gen. Lease	Comm/Radar	.282	Nanakuli, Oahu 9-9-06:88	50 years 7/1/64-6/30/2014	1.00 term
Hawaii County[2]	3515	DLNR Rev. Permit	Fire Dept. Comm. Radio Relay	.783	Keaukaha, Hawaii 2-1-13:7	-------	Gratis
TOTAL				333.452 Acres			$

1. Mutual cancellation to take effect 8/12/83.

2. Letter of 1/10/83 informing Fire Department that the R/P will be cancelled by DHHL effective 2/28/83.

HAWAIIAN HOMES COMMISSION

AGENDA: May 26, 1983

SECTION: District Management

TOPIC: Applications Report for the Month Ending April 30, 1983

PAGE: 5

[illegible]

MONTHLY REPORT

Month Ending April 30, 1983

4/01/83						4/30/83
6686	Residence Applicants	- 10	+ 36	=		6712
764	Agriculture Applicants	- 2	+ 13	=		775
380	Pasture Applicants	- 0	+ 1	=		381
7830		- 12	+ 50	=		7868

FISCAL YEAR-TO-DATE REPORT

Ten Months Ending April 30, 1983

7/01/83					4/30/
6535	Residence Applicants	- 361	+ 538	=	6712
665	Agriculture Applicants	- 63	+ 173	=	775
348	Pasture Applicants	- 11	+ 44	=	381
7548		- 435	+ 755	=	7868

APPENDIX C

HOMESTEAD APPLICATIONS WAITING LIST MONTHLY REPORT FOR THE MONTH ENDING April 30, 1983

ITEM: 1
PAGE: 7

A WAITING LIST

ISTRICT AREAS	RESIDENCE Last Month	RESIDENCE Add/ Cancel	RESIDENCE Total	AGRICULTURE Last Month	AGRICULTURE Add/ Cancel	AGRICULTURE Total	PASTURE Last Month	PASTURE Add/ Cancel	PASTURE Total	TOTAL
ahu District	2918	-6	2912	7	0	7	0	0	0	2919
aui District	302	0	302	11	0	11	9	0	9	322
ast Hawaii District	207	0	207	31	0	31	0	0	0	238
est Hawaii District	168	0	168	26	0	26	174	0	174	368
auai District	200	-1	199	26	0	26	35	0	35	260
olokai District	62	-1	61	40	0	40	2	0	2	103
TOTALS	3857	-8	3849	141	0	141	220	0	220	4210

ISLANDWIDE WAITING LIST

ISLAND	RESIDENCE Last Month	RESIDENCE Add/ Cancel	RESIDENCE Total	AGRICULTURE Last Month	AGRICULTURE Add/ Cancel	AGRICULTURE Total	PASTURE Last Month	PASTURE Add/ Cancel	PASTURE Total	TOTAL
ahu	1137	+14-1	1150	0	0	0	0	0	0	1150
aui	252	+ 8-1	259	25	+4	29	8	0	8	296
Hawaii	934	+11	945	411	+8-2	417	114	+1	115	1477
auai	252	+ 3	255	88	0	88	8	0	8	351
olokai	254	0	254	99	+1	100	30	0	30	384
TOTALS	2829	+36-2	2863	623	+13-2	634	160	+1	161	3658

AREA AND ISLANDWIDE LISTS

	RES.	AGR.	PAST.	TOTAL
AHU	4062-60%	7- 1%	0- 0%	4069-52%
AUI	561- 8%	40- 5%	17- 4%	618- 8%
HAWAII	1320-20%	474-61%	289-76%	2083-26%
AUAI	454- 7%	114-15%	43-11%	611- 8%
OLOKAI	315- 5%	140-18%	32- 9%	487- 6%
TOTALS	6712-100%	775-100%	381-100%	7868-100%

APPENDIX D

Ka Wai Ola O OHA
Volume I, No. 2
"The Living Water of OHA"

OHA Sues State

Matson Yard
Harbor
Public Land
Airport
Trust
Aloha Tower
Sand Island
Airport Concessions

inside

'Joint Venture' Explained .... page 2
Waihee and Reparations .... page 4
House Committee Sets Hearing .... page 4
Educational Needs Cited .... page 6

OHA Asks Millions in Revenues

Trustees of the Office of Hawaiian Affairs on Mar. 8 filed suit in State Circuit Court to compel the payment of revenue due the Hawaiian people from trust lands under control of the State Department of Transportation (DOT) and the Department of Land and Natural Resources (DLNR).

The public land trust was created from ceded lands which were owned by the crown and the Hawaiian government prior to the illegal overthrow of the monarchy in 1893.

The law requires the state to pay OHA, for the betterment of native Hawaiians, 20 percent of all funds from the "lease, sale or other disposition" of the lands included in the public land trust. However, despite repeated requests, the state has refused to do so.

OHA's complaint seeks 20 percent of the trust revenues retroactive to 1978, when OHA was established by the constitutional amendment.

Millions of dollars are involved. It is impossible to say just how many, because the state has yet to compile an accurate inventory of ceded lands.

OHA's suit asks for its 20 percent share of revenue from the following categories of ceded lands.

1. DOT general leases of ceded land for non-government uses. (For example, operation of bars and restaurants, retail stores, and various repair, maintenance and service operations.)
2. Ceded lands at Sand Island under the jurisdiction of the DOT and DLNR. (These include the Matson container yard and a 63 acre parcel leased out for light industrial purposes.)
3. Income and revenues from harbors throughout the state.
4. Honolulu International Airport. (For example, the Duty Free Shops.)
5. The proposed Aloha Tower complex.

After careful consideration, the OHA Board retained attorneys David Schutter and Boyce Brown, feeling that the combination of experienced and prominent attorneys will result in the most forceful and convincing presentation of OHA's claims.

The Board, through its Vice Chairman Rodney Burgess, issued the following statement at the time the suit was filed in court.

"The suit has been filed with great reluctance and only after two and one-half years of futile attempts to negotiate a fair and reasonable settlement with the state administration. Because the Department of Transportation refuses even to discuss our entitlements, we are left no option other than to seek justice in the courts.

"The Board of Trustees literally has no discretion in this matter. To ignore the DOT's adamant refusal to comply with the law, would be a breach of fiduciary duty which could subject us to a suit by any of our beneficiaries.

"I think it is important to realize that the public land trust was established not just for Hawaiians. Our State Consti-

entitled to 20 percent of public land trust revenues. That means that 80 percent of the money being withheld by DOT is diverted from the public purposes specified by Congress as a condition to statehood in 1959.

"In practice, the Legislature has allocated the public portion of trust land income (generated from lands administered by the Department of Land and Natural Resources) to educate all of Hawaii's children. It goes to the Department of Education. So the DOT is diverting, to its own operations, millions of dollars which could be used to lower the price of school lunches and improve the overall quality of our public schools.

"In doing so, DOT violates a basic precept that the administrator of trust assets must be responsible and accountable to the trust beneficiaries. Appointed officials of DOT spend this public land trust income pretty much as they please. They need not seek approval from the Legislature, from OHA, or any other elected body or individual. We believe these funds have been diverted illegally and must be restored to their intended beneficiaries . . . native Hawaiians and the general public.

"Late last year it became apparent that the state had no intention of complying with the public land trust conditions imposed by the Admission Act, the Hawaii State Constitution and by state law.

"In September, 1983, the Attorney General, in what has been described as a 'made as instructed' opinion, claimed that harbors and airports should not be included in the public land trust even though many of these facilities are built on ceded lands.

OHA Trustee Rodney Burgess, right, reads contents of suit at press conference at First Circuit Court. Looking on at left are Attorneys David C. Schutter and Boyce Brown who will handle the suit for OHA.

"This opinion comes on the heels of the Legislative Auditor's preliminary report which reaches just the opposite conclusion. In fact the Auditor recommends that all public land should be treated as part of the public land trust.

"One final point. I want to assure the people of Hawaii that, despite unsubstantiated implications to the contrary, compliance with provisions of the public land trust will not adversely affect the state's economy or its bond rating. Exhaustive research shows that the state can meet its obligations to the public land trust without creating an unmanageable financial burden.

"Although the Trustees have been forced to take legal action in order to meet our fiduciary responsibilities, the door to good faith negotiations remains open through our attorneys.

"We are confident that the life of the land WILL be preserved in righteousness . . . . Ua Mau Ke Ea O Ka 'Aina I Ka Pon-

Senator **MATSUNAGA**. Thank you very much, Mililani. And I appreciate your most comprehensive brief. With reference to the study you have made, I do have some questions, but because of the time limitation, I may ask you to respond in writing to certain questions.

Ms. **TRASK**. I would be glad to do that, Senator. I would be glad to do that.

Thank you.

Senator **MATSUNAGA**. Thank you very much.

Our next witness is Linda Delaney, chief of research of the Kaulana Na Pua Institute.

STATEMENT OF LINDA DELANEY, CHIEF OF RESEARCH, KAULANA NA PUA INSTITUTE

Ms. **DELANEY**. Thank you, Senator, Congressman Akaka, and as one who is usually on the other side of this table as staff—many people thank you and your participation here, and I will again. But at the same time, I'd like to note the work and all of the energy that I know the staff has to put in; and too often people do not say thank you to them as well.

I do not have my remarks in fully prepared form, but I would like to submit them to you and your committee later.

Senator **MATSUNAGA**. Incidentally, if anyone wishes to submit written statements—you may do so within 2 weeks from today, and they will appear in the record.

Ms. **DELANEY**. I would like, however, to at least make some major points in terms of my own feelings, and I believe some of the possibilities which are open to this committee, in making certain kinds of changes that I at least, and I feel great many other people, would endorse by way of the eliminating of the blood quantum definition for native Hawaiians.

The least strong argument, as far as I am concerned, in what has so far been presented before this committee, is that the 50-percent blood quantum definition is that of existing law. I would remind this committee that that is the same difficulty that we encountered in terms of trying to address at least the basis of presenting claims. Because existing law did not permit it, and therefore you cannot permit ourselves to even discuss it.

I would like to go back at least briefly to the 1920 census of that time, in which 40,000 Hawaiians were enumerated—this is under territorial census-taking—so that we are able to determine that at that time, one-half were pure or 100 percent Hawaiian. The other half were 50 percent or more native Hawaiian. So the blood quantum definition in 1920 or 1921 was meant to be all-inclusive, not excluding Hawaiians from that definition. I believe that the law is fluid and changing, that there are ways in which the lands trust the integrity of the wards may be maintained. And that is the recommendation of volume 2—that regardless of how the blood quantum may be changed, that these kinds of guarantees must be made.

I would like to suggest, however—and I'm afraid in this respect I must disagree with what some of OHA Trustee Moses Keale said earlier today—I have a tremendous concern and on a personal level as well, for the successorship involved and the terrible kinds of trauma which has occurred in Hawaiian families. However, if we are to answer that need by creating another problem, and by that I mean creating a third definition of native Hawaiian which is itself merely a subcategory—no one has recommended that the successorship be changed to 25 percent blood quantum. They have said 25 percent blood qauntum of those who are children of native Hawaiian homestead awardees. That is a very small group. That would give us a third definition, rather than clarifying anything else. I would suggest that that 25 percent blood quantum is already a complication within that act, because that is the allowance blood requirement for Native Hawaiian Home Commissioners who serve.

If I may, I would like to suggest that there simply be something that would allow for the inheritance of the Hawaiian Homes award, to anyone within the family or otherwise designated as long as they are native Hawaiian without reference to blood quantum. I believe that that way, you are not facing in another 20 years those who have the 25-percent successorship arguing that for a one-eighth successorship for their children.

The other argument which I have found fairly persuasive in terms or arguing for the present blood quantum, is that what extrapolations we can make in terms of social need categories—health assistance, educational achievement, virtually any which we may extract to show native Hawaiians separate from the non-50 percent Hawaiian—has shown a greater need among those who are 50 percent or more. I would suggest, however, that most of that distinction is economic, based on what they can receive to respond to a problem that is already there. It's as though you were trying to assure that the doctor will sign the death certificate rather than developing the research programs needed to prevent. And at that level, I believe that I and every other Hawaiian is subject to the same kinds of ethnic conditions rather than economic.

Just as a final note, at a personal level I was rasied by a grandmother who always told me to be proud I was Hawaiian. And I don't want you to believe that an act of Congress was enough to make me non-Hawaiian. And I would like, if I could, to quote from Nathan, who gave the opening earlier this morning, when he testified before the Native Hawaiians Study Commission. He said: "I was Hawaiian in my mother's womb. I wasn't an American until I was born. I am Hawaiian."

I would like Congress to think I was, too.

Thank you.

Senator Matsunaga. Thank you very much.

Our next witness is Mrs. Winona Beamer, a member of the Native Hawaiians Study Commission, who along with Mr. Rodger Betts and Kina'u Kamali'i stood fast against the majority. We'd be happy to hear from you, Winona.

STATEMENT OF WINONA BEAMER

Mrs. Beamer. Thank you, Senator Matsunaga. We certainly thank you for your time and trouble, Senator. Through all of this I have been most concerned about education, and if I may say a few words.

Senator Matsunaga. We'd be happy to hear from you.

Mrs. **Beamer**. I ku no i ka mana a ke kahu hanai (a child takes on the qualities of his guardian). This is the theme of the 1983 State Convention of Hawaiian Civic Clubs. And this Hawaiian description of early learning habits was discussed by a panel before the entire assembly of delegates as personal memories of discipline and caring, a valued experience which should be encouraged and practiced with self-knowledge.

What was not discussed at the convention, but which has been a major focus of formal studies regarding Hawaiian children and learning, is that these acquired characteristics—what can only be called the continuation of Hawaiian culture and values—are identified as "problems" in our public schools.

The recent Native Hawaiian Educational Assessment Project Final Report, conducted and funded by the Kamehameha Schools/ Princess Bernice Pauahi Bishop Estate, published July 1983, included a chapter entitled, "Culturally Related Academic Needs." This section of their report offered a quick contrast of Hawaiian values as reflected in children, and how these same attributes result in identified educational difficulties. I quote:

> As a group, Hawaiian children are vigorous, socially skilled, talkative, affectionate and aggressive. None of these traits are surprising; they arise naturally from the peer and sibling-oriented culture. But these traits as manifested in an ordinary classroom can produce chaos; when viewed by a frustrated teacher, they are described in far less complimentary terms, such as "rowdy, restless, inattentive, lazy, uninvolved, provocative."

Worse, these impressions and genuine conflicts of culture—the difference between children's behavior as learned at home and the expectations of the educational culture—have resulted in a stereotype; and I quote:

> Children of Hawaiian ancestry, especially from the more remote communities, have acquired a lasting reputation with school authorities for their minimal motivation in academic pursuits, the frequency of their absences or withdrawal from school, their undisciplined conduct, and disregard for the sanctity of private property and sex.

The widespread acceptance of this stereotype by professional educators can, and in most instances has, resulted in what is called "institutionalized racism." The educational system adopts the stereotype and then treats the individual student accordingly. Now, perhaps this pattern of racism has its starkest outline in the numbers of students enrolled in the gifted programs. The following figures are taken from a report on "Under-representation of Native Hawaiians at the University of Hawaii" (November 1981; Official University of Hawaii Report), and accompanying materials contained in a memorandum of Dr. Kiyoshi Ikeda:

The total figures of ethnic students participating in the gifted and talents programs in the Hawaii public schools. A low of 6.6 to a high of 34.6 percent. The Hawaiian is next to the lowest; 6.9.

What's wrong with those numbers?

Typically, and according to most experts, "gifted" attributes, when judged by academic performance, achievement tests or IQ scores, occur at random in a population. Thus, "gifted" students should occur roughly at their same numbers within the population. However, there's a discrepancy of almost 24 percent in the Hawaiian participation in the elementary schools. Of the entire public school population, 30 percent are Hawaiian children, and only 6.9 are gifted programs. This is about 7 out of every 100 students.

The under-representation of Hawaiian children in gifted programs is only matched by their over-representation in categories which demonstrate educational problems. Of the 20 percent of Hawaiian students enrolled in the elementary and secondary schools, almost 40 percent, or almost 40 out of every 100, are identified as learning-disabled.

This same curve distribution of learning disabilities or the need for special education should be commensurate with the gifted. However, in this area, native Hawaiian children are significantly over-represented.

In categories which demonstrate educational alienation, such as absenteeism, withdrawal from school, below average standardized achievement test [SAT] scores and failure to complete high school, native Hawaiians are again significantly over-represented.

Too little attention, however, has been paid to "systematic disadvantage"—to the characteristics of the instutitional decisions which, if based on hostile stereotypes, may actually foster educational failure among Hawaiian children.

One such area is the ethnicity of the system itself. If, as studies have been concluding for nearly 20 years, Hawaiian students display cultural behaviors which are unique but at odds with the system, we might expect a sympathetic response by that system to include a concerted hiring of people of the same cultural background.

The following tables—following this on page 6—used in the final report of the Native Hawaiians Study Commission—show that such hiring has not occurred; but rather, the opposite has prevailed.

Only three-tenths of 1 percent of the educational work force is Hawaiian. How can we expect our Hawaiian students, who make up 30 percent of the public school population, to identify culturally in public schools where only three-tenths of 1 percent are Hawaiian? It is imperative that Hawaiian children be induced to respect, understand, and appreciate their positive ethnic characteristics. It is imperative that be directed toward participation and leadership.

It is anticipated that this 30-percent Hawaiian population in our public schools will double in the next 10 years. Our public schools must be prepared to meet and provide for the needs of these unique children. We must not discourage their eager drive to participate and contribute. We must not waste this vast and rich resource of Hawaiian culture.

In Kawena Kukui's (phonetic) recent publication, Ole O No E Au (phonetic), there are over 80 ancient Hawaiian proverbs and poetical sayings that emphasize the importance of teaching, learning, and wisdom. These tell us the Hawaiians have always valued and respected education. This philosophy is as strong today as it was yesterday.

Almost 150 years ago, Kamehameha III emphasized the importance of education. Ke Awa Puni Kalakaua Kou O Ke Kaha Kapono O Ea Ko Kanaka (phonetic). Mine is the Kingdom of Education. The righteous man is my man.

And this proverb is pertinent for today.

Education is the key.

Aloha.

[The prepared statement of Mr. Beamer follows:]

NA KAHU HANAI

The theme of the 1983 State Convention of Hawaiian Civic Clubs was:

> "I kū no i ka mana a ke kahu hānai..."
> A CHILD TAKES ON THE QUALITIES OF HIS GUARDIAN

This Hawaiian description of early learning habits was discussed by a panel before the entire assembly of delegates as personal memories of discipline and caring, a valued experience which should be encouraged and practiced with self-knowledge.

What was not discussed at the Convention, but which has been a major focus of formal studies regarding Hawaiian children and learning is that these acquired characteristics -- what can only be called the continuation of Hawaiian culture and values -- are identified as "problems" in our public schools.

The recent Native Hawaiian Educational Assessment Project Final Report (conducted and funded by the Kamehameha Schools/ Princess Bernice Pauahi Bishop Estate; published July, 1983; Honolulu) included a chapter titled "Culturally Related Academic Needs." This section of their report offered a quick contrast of Hawaiian values as reflected in children, and how these same attributes result in identified educational difficulties:

> "...As a group, Hawaiian children are vigorous, socially skilled, talkative, affectionate, and aggressive. None of these traits are surprising; they arise naturally from the peer and sibling-oriented culture. But these traits as manifested in an ordinary classroom, can produce chaos; when viewed by a frustrated teacher, they are described in far less complimentary terms, such as 'rowdy, restless, inattentive, lazy, uninvolved, provocative'.."

Worse, these impressions and genuine conflicts of culture -- the differences between the children's behavior as learned at home, and the expectations of the educational culture -- have resulted in a stereotype:

> "...Children of Hawaiian ancestry, especially from the more remote communities, have acquired a lasting reputation with school authorities for their minimal motivation in academic pursuits, the frequency of their absences or withdrawal from school, their undisciplined conduct, and disregard for the 'sanctity of private property and sex'..."

The wide-spread acceptance of this stereotype by professional educators can, and ~~in most~~ many [illegible] instances has, resulted in what is called "institutionalized racism." The educational system adopts the stereotype and then treats the individual student accordingly. Perhaps this pattern of racism has its starkest outline in the numbers of students enrolled in "gifted" programs. The following chart is taken from a report on Under-representation of Native Hawaiians at the University of Hawai'i (November, 1981; Official University of Hawaii [sic] Report; Honolulu), and accompanying materials contained in memorandum from Dr. Kiyoshi Ikeda:

ETHNIC BACKGROUNDS OF STUDENTS PARTICIPATING IN
GIFTED AND TALENTED PROGRAMS IN THE HAWAI'I PUBLIC SCHOOLS
(Fall, 1979, By County)

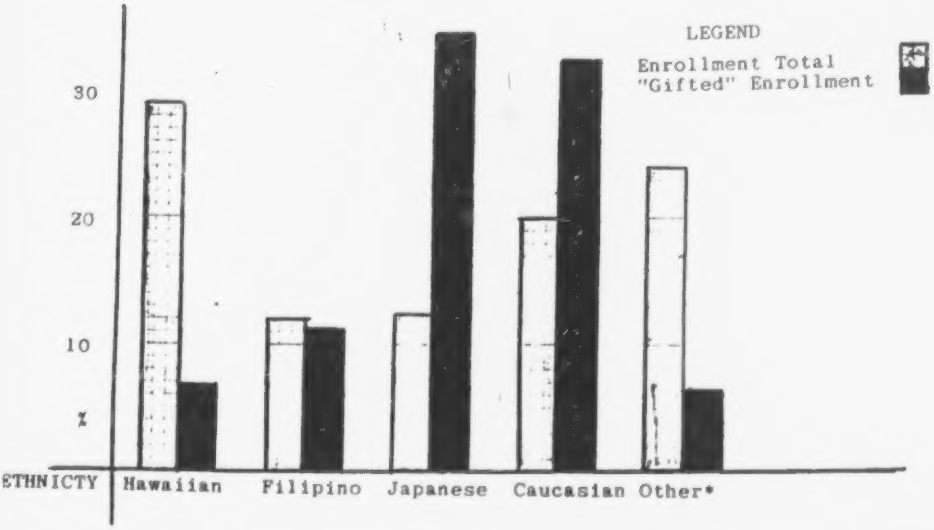
Ethnic Status	O'ahu	Hawai'i	Maui	Kaua'i	Total
Hawaiian	6.4	16.0	8.7	14.0	6.9
Filipino	12.1	13.3	-	20.0	12.1
Japanese	35.1	21.3	26.9	37.0	34.6
Caucasian	32.1	40.0	53.8	30.0	32.8
Other	7.0	9.3	2.9	-	6.6

What's wrong with those numbers?

Typically, and according to most experts, "gifted" attributes, whether judged by academic perfromance, achievement tests or IQ scores, occur at random in a population. Thus, "gifted" students should occur at roughly their same numbers within the population. This next chart shows the percentage of students by ethnic background within the entire school population, and their representation within gifted programs:

ETHNIC BACKGROUNDS OF STUDENTS IN HAWAI'I PUBLIC
SCHOOLS AND THEIR PARTICIPATION IN GIFTED OR TALENTED PROGRAMS

ELEMENTARY SCHOOLS

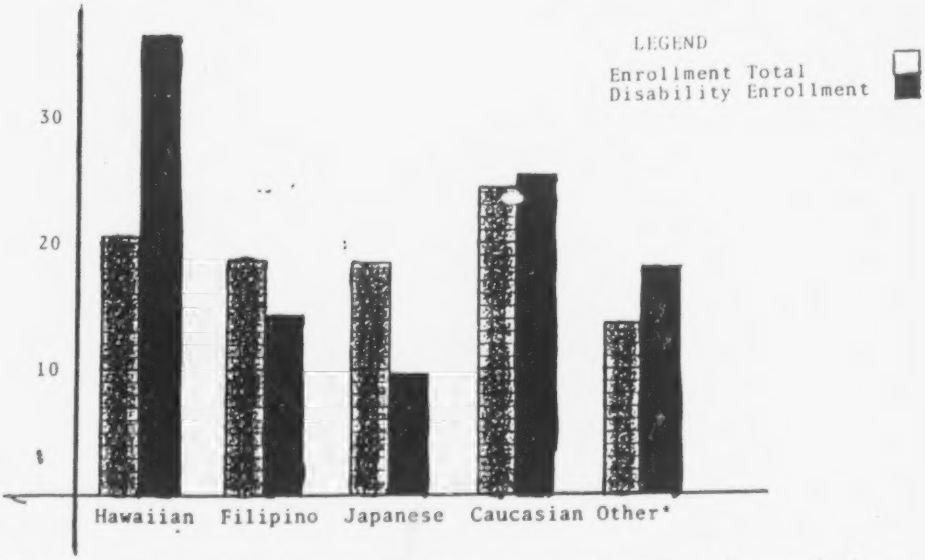


* Other includes Black, Korean, Samoan, Hispanic, Unknown

The under-representation of Hawaiian children in gifted programs is only matched by their over-representation in categories which demonstrate educational problems:

PUBLIC SCHOOL STUDENT ENROLLMENT AND IDENTIFIED LEARNING DISABILITIES ENROLLMENT

ELEMENTARY AND SECONDARY SCHOOLS



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[1] Identified learning disabilities include levels of mental retardation, physical handicaps, and behavior-related problems.

*Other includes Chinese, Black, Korean, and Samoan.

This same "curve distribution" of learning disabilities or the need for special education should also hold, as with the gifted. However, in this area Native Hawaiian children are significantly over-represented.

In categories which demonstrate educational alienation, such as absenteeism, withdrawal from school, below average Standardized Achievement Test (SAT) scores and failure to complete high school, Native Hawaiians are again significantly over-represented.

Too little attention, however, has been paid to "systematic disadvantage" — to the characteristics of the institutional decisions which, if based on hostile stereotypes, may actually foster educational failure among Hawaiian students.

One such area is the ethnicity of the system itself. If, as studies have been concluding for nearly twenty years, Hawaiian students display cultural behaviors which are unique but at odds with the system, we might expect a sympathetic response by that system to include a concerted hiring of ~~those whose culture better-matched the students~~ people of the same cultural background.

The following tables, used in the Final Report of the Native Hawaiians Study Commission, show that such hiring has not occurred. Rather, the opposite has prevailed.

ETHNIC COMPOSITION OF EDUCATIONAL OFFICER AND TEACHER WORKFORCE (1977-80)

Officers

Ethnic Group	06/77	06/78	06/79	06/80
Black	0.2	0.2	---	---
Filipino	3.1	3.3	3.6	3.4
Chinese	9.7	9.4	9.3	9.0
Hawaiian	0.2	---	---	---
Korean	2.2	2.6	2.4	2.4
Part-Hawaiian	5.3	5.4	6.6	6.5
Puerto Rican	0.2	0.2	0.2	0.2
Samoan	---	---	---	---
White	11.6	11.7	10.9	10.4
Japanese	65.9	65.6	65.0	66.4
Mixed	1.4	1.3	1.7	1.5
Others	0.3	0.3	0.3	0.2
Total (%)	100%	100%	100%	100%
Total	(639)	(608)	(589)	(613)

Source: Solomon, p.5

Teachers

Ethnic Group	06/77	06/78	06/79	06/80
Black	0.3	0.3	0.4	0.3
Filipino	2.4	2.5	2.6	2.7
Chinese	8.5	8.4	8.2	8.2
Hawaiian	0.3	0.3	0.3	0.3
Korean	1.2	1.2	1.2	1.2
Part-Hawaiian	6.7	6.7	6.7	6.7
Puerto Rican	0.1	0.1	0.1	---
Samoan	0.2	0.2	0.1	0.1
White	17.4	17.2	16.9	17.1
Japanese	59.1	59.3	59.6	59.5
Mixed	3.3	3.4	3.5	3.5
Others	0.5	0.4	0.4	0.4
Total (%)	100%	100%	100%	100%
Total	(9,146)	(9,148)	(9,121)	(9,167)

Source: Solomon, p.11

This discrepency in the ethnicity of the educational workforce was one of the variables used in ranking 25 targeted schools according to the ethnicity of their student population, performance on the State Competency Test, and below average achievement on the SAT tests in reading and math.

This chart has the advantage, usually "fictionalized" in other reports — whether the "Pumehana" community (Nānākuli) of the Gallimore study or "A," "B" schools used in the Assessment Report — of actually naming the schools:

RANK ORDERING OF 25 SCHOOLS IN HAWAI'I ON VARIABLES RELATED TO TARGETING PROGRAMS FOR THE EDUCATIONALLY-DISADVANTAGED NATIVE HAWAIIAN

A			B		
The Percentage of Native Hawaiians in the Student population			The Percentage of Students ~~That~~ Who Passed the State Competency Test		
Rank	School	Percent	Rank	School	Percent
1	Hana	80.9	1	Nanakuli	37.5
2	Molokai	69.1	2	Molokai	38.7
3	Nanakuli	62.0	3	Waianae	40.4
4	Waimea Int. (Hawaii)	56.6	4	Kahuku	41.2
5	Waianae	42.8	5	Pahoa	41.5
6	Konawaena	41.1	6	Laupahoehoe	42.3
7	Kohala	37.1	7	Kapaa	44.8
8	Pahoa	35.8	8	Central Int.	45.0
9	Kailua	35.3	9	Hana	46.1
10	Lahainaluna	35.0	10	Kohala	46.5
11	Ka'u & Pahala	33.6	11	Honokaa	47.8
12	Kapaa	30.5	12	Waimea (Kauai)	50.0
13	Kahuku	30.4	13	Waialua	53.3
14	Maui	26.3	14	Jarrett Int.	53.4
15	Waialua	25.4	15	Maui	54.1
16	Honokaa	24.2	16	Lahainaluna	58.8
17	Hilo	23.6	17	Waimea (Hawaii)	59.1
18	Waiakea	22.4	18	Hilo	59.8
19	Baldwin	22.3	19	Ka'u & Pahala	61.2
20	Castle	22.2	20	Baldwin	63.4
21	Central Int.	22.0	21	Konawaena	67.0
22	Laupahoehoe	21.6	22	Waiakea	69.2
23	Jarrett Int.	21.5	23	Stevenson Int.	70.3
24	Stevenson Int.	20.3	24	Kailua	73.5
25	Waimea (Kauai)	20.1	25	Castle	79.8

RANK ORDERING VARIABLES (cont'd.)

C

The Percentage of Below Average Students on the 1979 SAT Scores

Rank	School	Percent
1	Nanakuli	61.8
2	Hana	57.8
3	Waianae	53.2
4	Central Int.	48.0
5	Molokai	47.0
6	Ka'u & Pahala	44.8
7	Pahoa	43.6
8	Jarrett Int.	42.5
9	Kahuku	42.1
10	Waimea (Hawaii)	42.0
11	Waialua	41.4
12	Lahainaluna	39.3
13	Kapaa	37.3
14	Honokaa	36.0
15	Maui	35.1
16	Hilo	35.0
17	Kohala	34.0
18	Laupahoehoe	32.0
19	Konawaena	30.0
20	Waimea (Kauai)	29.0
21	Castle	28.0
22	Kailua	27.0
23	Baldwin	26.0
24	Stevenson Int.	22.5
25	Waiakea	21.8

D

The Precentage of Native Hawaiian Teachers in the Targeted School

Rank	School	Percent
1	Jarrett Int.	0.0
2	Waimea (Kauai)	2.3
3	Central Int.	2.7
4	Maui	4.5
5	Hana	5.0
6	Waiakea	5.1
7	Molokai	5.4
8	Hilo	5.6
9	Kailua	7.3
10	Konawaena	7.9
11	Honokaa	8.3
12	Kapaa	8.4
13	Lahainaluna	8.6
14	Nanakuli	9.2
15	Waialua	9.3
16	Waianae	9.3
17	Ka'u & Pahala	9.4
18	Stevenson Int.	9.5
19	Baldwin	10.1
20	Pahoa	10.7
21	Castle	13.2
22	Waimea (Hawaii)	15.2
23	Laupahoehoe	16.7
24	Kohala	23.1
25	Kahuku	26.0

These charts are among the very few which examine an institutional problem, rather than beginning with the assumption that the basic problem is the "Hawaiian-ness" of the students. This attitude, then (and it is one which has its most unfortunate example in the Educational Assessment Project conducted by the Kamehameha Schools/Bishop Estate), is that educational shortcomings which can only be traced to institutional decisions are ignored.

A case in point is an examination of the library resource materials which are available in schools. According to the Department of

Education Library Division, a satisfactory number of books per student enrolled is 15.

This books to student ratio, a direct result of monetary allocation by the principal of the school after consultation with the district and state supervisory staff, ~~and~~ cannot in any way reflect on being Hawaiian. Unless, that is, one accepts that institutional racism may be involved in the decision of whether or not to purchase books.

After a review of books available in elementary and intermediate schools state-wide, the following schools are identified as having a "critical need" for library books. These schools have fewer than 10 books per student:

CRITICAL LIBRARY BOOK~~S~~ NEEDS IN HAWAI'I SCHOOLS
IDENTIFIED IN TARGETING VARIABLES

Ma'ili Elementary	LEEWARD DISTRICT
Nanakuli	
Wai'anae Intermediate	
Kahuku	WINDWARD DISTRICT
Waimanalo	
Ka'u & Pahala	BIG ISLAND DISTRICT
Konawaena	
Laupahoehoe	
Waiakea Intermediate	
Lahaina Intermediate	MAUI DISTRICT
Moloka'i	
Kaua'i	KAUA'I DISTRICT
Ni'ihau	

Senator MATSUNAGA. We will now hear from the third member of the minority of the Native Hawaiians Study Commission, Rodger Betts.

Mr. BETTS. Senator Matsunaga, I'm somewhat unprepared for this presentation. I did not know that I was expected to make a presentation today. I do not have a written statement. I would like to take the time to prepare one.

Senator MATSUNAGA. Yes, and if you would summarize your statement, we'd appreciate it. We'll place your written statement in the record when we receive it.

STATEMENT OF RODGER BETTS

Mr. BETTS. What I'd like to discuss, here, briefly, Senator, is why we have volume II. I'd like to give some history of that.

As you know, the Commission was badly underfunded. Although the act provided for us to have our own counsel, there were insufficient funds to do that. The net result of all of that, with no place else to go, one of our Commission members being an Assistant U.S. Attorney General, the legal ramifications of the whole matter ended up in the Justice Department. This was like the foxes watching the henhouse. As you know, Senator, they're all conditioned to protect the United States against any claim, even from God.

For example, I was a vice chairman of the committee that was to arrive at this analysis and conclusions. Even though I had written a paper on it, I think I believe you're familiar with the paper I wrote, Senator Matsunaga, in 1974. I was never at any time consulted. I saw, like the rest of the Commissioners, when we went to Washington, we saw the completed document, which basically did not change. The preliminary document did not change, to the final one.

At that point, I objected to it. One of the objections I had is, I thought they had gone too far, that this was not the role of the Commission to decide that present laws don't affect—are not available at this time, therefore nothing could be done—not even to indicate to the Congress that present laws don't take care of this situation. So therefore we recommend, Congress, you do one, two, three, four, five—which I think is what volume II does. But faced with the reality of, as you have—Senator, very often—with the reality of a vote, 2 to 1, and the frustration that goes with that. Now, we could have dealt with this thing simply by saying—voting "No" and walking out; but that would not be sufficient. The whole case had to be put together, and put together well—better than they put it together, because obviously they did a very bad job.

So this is what we decided to do. I must say we had tremendous support from your office, and everybody, and from the people in Hawaii. And I believe that volume II is the volume that attention should be paid to.

I must caution everybody, however, that volume I—90 percent of volume I the Commissioners concur with—as a matter of fact, most of that information was obtained here in Hawaii. It's that 5 percent that deals with the responsibilities for the overthrow and the recommendations that follow it. As you know, because the majority report removes all responsibility from the United States, obviously the recommendations are that to cure the problem of the Hawaiians, this must be done by the States and the countries and private Hawaiians—which is ridiculous.

In my testimony yesterday and my statement which is already in the record, and I think what this committee has heard—there is no question as to the responsibility of the United States in the overthrow of the Government, the subsequent mal-actions leading to the annexation and the loss of dominion and domain on the part of the Hawaiian people by these wrongful facts. True, there is no present law by which Hawaiians can be recompensed. And there is no present law that addresses this tort which occurred, this wrongdoing that occurred. And in order to see to it that the committees of the House and the Senate, when the matter got to them, that they just didn't have the majority report, which as we all know, is faulty and in many cases is fatally wrong. We had to present something to the committees of the Congress, presenting what we believe is to be the truth and as I discussed with Kina'u today, we would have presented that even if we did not have a drop of Hawaiian blood. Because justice is justice.

Thank you.

Senator MATSUNAGA. Thank you very much, Mr. Betts.

Our next witness is Mr. Rusty Rodenhurst.

As he is absent, we will then call on Mr. Lawrence Kumabe or Mr. Earl Nishimura, who is the director of the Japanese-American Citizens League, Honolulu Chapter.

STATEMENT OF EARL K. NISHIMURA, PAST PRESIDENT AND LEGISLATIVE COMMITTEE CHAIRMAN, JAPANESE-AMERICAN CITIZENS LEAGUE

Mr. NISHIMURA. Thank you, Senator Matsunaga, Congressman Akaka, Aloha.

I'm Earl Nishimura, a past president and legislative committee chairman of the Honolulu chapter of the Japanese-American Citizens League.

Our chapter is one of the 114 chapters of a national organization with the headquarters in San Francisco. The organization has over 30,000 members across the Nation. It has a full-time Washington, DC, representative monitoring all congressional civil rights legislation affecting Japanese-Americans and other minority Americans. It has a history of 50 years of advocating civil rights, fighting discrimination, and of correcting unjust civil wrongs.

Today at this hearing, I would like to thank you for the privilege you have given me to speak in support of the Native Hawaiians reparation claims.

The findings and recommendations of the majority report, as contained in volume I of the Native Hawaiians Study Commission, must be unequivocally rejected. The conclusions are based on a misinterpretation of facts.

The forcible overthrow of the Hawaiian Kingdom resulted from the deliberate acts of lawless conspirators of Queen Liliuokalani's own cabinet men—a coup d'etat. Because of this coup d'etat, Native Hawaiians lost not only their kingdom but also a symbol of unity. The unlawful act to overturn the constitutional monarchy is certainly not a proud chapter in our 200-year American history.

The acceptance of the majority report would be a gross injustice to the Hawaiians, as it does not recommend just compensation for the land taken and used for public purposes.

Ninety years later, after the historical wrong, your committee has an opportunity to correct that wrong.

We respectfully urge that your committee reject the majority report and adopt the minority report for fair and equitable Hawaiian reparation claims.

Senator MATSUNAGA. Thank you very much, Mr. Nishimura. It's good to know that other minority groups are coming to the support of the Native Hawaiian minority.

Our next witness is Mr. Arthur Kinney of the Aloha Association. Arthur, are you here?

Since he is not here then our next witness is Mr. Mitsuo Uyehara. He is with the Native Hawaiian Land Trust Task Force. We'd be happy to hear from you.

STATEMENT OF MITSUO UYEHARA, NATIVE HAWAIIAN LAND TRUST TASK FORCE

Mr. UYEHARA. Senator Sparky Matsunaga, and staff members of the U.S. Committee on Energy and Natural Resources, good afternoon. My name is Mitsuo Uyehara. I was born and raised in Hawaii, and I'm an attorney with expertise in Hawaiian land laws and American Samoa land laws relating to trusts and related matters. I've authored several publications relating to Hawaii civil land trusts and related matters. I speak here today for the Native Hawaiian Land Trust Task Force as an attorney and advisor and project director.

The Native Hawaiian Land Trust Task Force is composed of Native Hawaiians of 50 percent plus blood, and Hawaiian organizations and individuals. The purpose of the objective for Native Hawaiian Land Trust is to provide for full implementation of the two Admission Act land trusts—that is, Hawaiian Homes Commission Act and Admission Act, section 5(f) land trusts.

Our position is that the Native Hawaiian Study Commission had failed to present an adequate report on the qualitative needs and concerns of the Native Hawaiians, in volume I and II of the Final Report; because said commission was commingled the two classes of Native Hawaiians as defined in State and public law, the Hawaiian Homes Commission Act and others.

Regarding this hearing, the Native Hawaiian Land Trust Task Force has filed with each of the congressional districts, including Senator Matsunaga and the committees in both Houses, a separate report distinct from the study commission. However, we've included within said volume I which appears on page 736, upper left half corner, our position regarding that which appears in our separate report. That is to say that, to preclude any misunderstanding of the qualitative needs and concerns of title I Native Hawaiians, we have submitted that report of ours. Events since then have definitely concluded that if we had not done so, then the position of title I Native Hawaiians would have been lost, in view of testimony which has been presented in Honolulu, Captain Cook, Wailuku, and here, in Lihue, Kauai.

However, since all three reports within your Committee on Energy and Natural Resources does present a point of view, each of those should be given due reading required of any report to Congress. Volume I, referred to before, is the position paper of the Reagan administration. Volume II, minority report, is the position paper of the title III Native Hawaiian view. Since title III Native Hawaiians represent the majority of three to one, they would by very fact of number prevail, and this fact of prevailing in numbers could be taken without analyzing the rare fact that this majority has the official support all the way from Hawaii to Washington, DC, as noticed in the support of the counties, identical provisions given support of volume II, in relation to volume I. It indicates how strong support of volume II has, by sheer number.

I'm going to present to you a written testimony. However, as a matter of summarization, the key position of the Native Hawaiian Land Trust Task Force is not to change the definition of Native Hawaiian—that it addresses the effect of volume II.

Thank you, Senator Matsunaga.

Senator MATSUNAGA. Thank you very much, and if you would submit your written statement, it will appear in the record.

Mr. UYEHARA. Yes.

Senator MATSUNAGA. All right. Thank you very much.

Our next witness is Mr. Richard Kinney.

STATEMENT OF RICHARD KINNEY, HAWAIIAN POLITICAL ACTION COUNCIL OF HAWAII

Mr. KINNEY. Aloha, Senator Matsunaga, Congress Representative Akaka, aloha.

I come here to speak as a director of the Hawaiian Political Action Council of Hawaii. As we stated in Honolulu, HPACH does not accept the findings in volume I. In fact, we recommend to everyone in this room, don't waste your time reading it. It is a greedy piece of document that insults the dignity of Hawaiian people and the pride of the Hawaiian people.

With volume II, there's one thing that is of utmost importance, that tells the whole thing. That is the picture that is on page number 60, if you folks could see. This is the picture that speaks a thousand words. This is the picture of the landing of the American marines and sailors on that dreaded day in Hawaiian history. The landing of the troops from the *Boston* against the will of the sovereign leader of that time, Queen Liliuokalani, and the wishes of the Hawaiian people.

Also what is important in volume II is on page number 65. The Queen's testimony—ceding her sovereign powers to the United States. These are the most important two items in this volume II. Also what is more important, and I'm sorry see that it is not in full context in this volume, is the entire contents of President Cleveland's speech when he called the landing of the troops and what happened to the Queen and the dilemma of her people as an act of war. An act of war which continues to this day. An act of war was committed when Hawaii became a republic without the voting consent of the Hawaiian people. An act of war that continued when Hawaii became a territory without a consenting vote of the native Hawaiian people. And an act of war even continued when Hawaii became a territory without the consent of the native Hawaiian people.

Also I would like to note in volume II that although foreign countries within 2 days, 2 weeks, supported that illegal provisional government, and I bring to your attention, Senator Matsunaga, Japan protested the overthrow, because it was very conscious of what would happen to their citizens in these islands once the United States took over.

HPACH supports any type of reparations to all Americans when crimes against their civil rights have been committed by the Federal and State governments—that is, to American Indians, that is to American Japanese of American ancestries, or whether it's even to we the people who sent our children to wars. I protest President Reagan's illegal actions in Lebanon. he lost my vote as a Republican.

When talking of the Hawaiian people's situation, HPACH supports restoration, restoring to the native Hawaiian people what was and still is the birth right of the native Hawaiian people, and that is sovereignty. We cannot talk about justice without restoring what was overthrown, and that is sovereignty. Return back to the Hawaiian people their sovereign rights over their lands, not only that they shall be the users of these native Hawaiian lands, but they should have administering rights to these lands.

Talking about the blood quantum, I'm sick and tired of hearing about the blood quantum. There's no problem with the law; the problem is the implementing of the law. If you want to study native Hawaiian blood, I will gladly donate one pint of my blood to this committee, and take it back to Washington, and define what part of that pint of blood is Hawaiian, Portuguese, Scottish, English, and tell me what the difference between the bloods in that pint. I see no difference in the blood that runs in your veins, compared to the blood that runs in Congressman Akaka's—Hawaiian blood is no different. So let's not get bogged down with secondary, minor issues.

All this, to you the people especially, is a very large puzzle that is made up of about 5,000 pieces. This is only two pieces. I have been doing research on this ever since 1957. I asked some heavy questions in my research, I find. Why was King Kalakaua's autopsy refused. In my research, autopsy was refused on King Kalakaua's body because he was medically assassinated in San Francisco. Why? What is the conduct, when only 20,000 acres are being claimed by native Hawaiians, Why did the Hawaiians refuse? My research, not because they were ignorant; because they knew only one thing—Aloha Aina—that the land belonged to God, that it was not theirs to go claim in fee simple. Curse those who did.

Also, what is the kauna [phonetic] in the drastic decline of the Hawaiian population in those days? Was it illness, or was it because medicine was refused to the Hawaiians, and they were allowed to die like flies?

Also, why, why was the personal documents of Queen Liliuokalani and King Kalakaua destroyed. They would tell us lots today, what we're researching.

Also, why the Dianet [phonetic] constitution? Why did the Hawaiians? I've seen personal documents where Dole was directed to force the King to sign the documents or else kill him. All that you've heard is just minor, to you the people. Do not sign the document, do not sign any paper, because the research will continue until we get the main picture. This is just the beginning. Just the beginning.

Again, we stress sovereignty. I have taken the role of sovereignty because, yes, I want that sovereignty right back to the Hawaiian people.

Mahalo again, for allowing me to testify. And all my written testimony will be handed in within 2 weeks.

Senator MATSUNAGA. Thank you very much, Mr. Kinney. Although Mr. Richard Kinney here is from Honolulu, his father was my neighbor in Hanapepe, Kauai.

Our next witness is Cheryl Ogawa MacPherson.

STATEMENT OF CHERYL OGAWA MacPHERSON

Ms. MACPHERSON. Chairperson Matsunaga, Mr. Akaka, and members of the Senate Committee on Energy and Natural Resources.

My name is Cheryl Ogawa MacPherson. The organization I had hoped to represent has not had a chance to formally endorse a statement. I hope this week to be able to get such an endorsement. So today, I wish to speak for myself and my family.

Like the chairperson of this hearing and others in this room, I am a Japanese American, born and raised in Hawaii. It has been the lot of Japanese Americans and many other hyphenated Americans to fall victim to the forces of racism in this country.

Racism may be described in part as the use of the systems and institutions of one racial culture to achieve and maintain power over another racial culture. That immigrant or formerly immigrant populations should fall victims to racism is terrible, but somewhat predictable. That a native population, a sovereign entity, should fall victim to racism, however, is outrageous.

Hawaii's history clearly reveals that the U.S. systems of business, government, language, law, and yes, even religion, worked hand in hand to overthrow the systems which, prior to the Americans' coming, had served Hawaii's people well. The outcome of this overthrow has indeed been a loss of power and dignity among Hawaiians. Statistics show that the native population has suffered painfully from the erosion of values and systems and their replacement by white American and other values and systems.

Mrs. Beamer's testimony a while ago is an example of this.

It is time for the institutions which control life in Hawaii to move beyond pacification; to move beyond using Hawaiian culture on ceremonial occasions and to attract tourists—although the culture certainly belongs in such places. It is time to work to restore Hawaiian culture to its full standing--its full standing—as the strong and gracious host culture which allows other cultures to flourish in its midst.

This will happen only if member of that host culture, that native population, are able to draw upon tangible resources which are designated as restitution for the losses sustained by them at the hands of an invading culture. As a first step, I urge this committee to heed the resolution calling for the rejection of those portions of volume I of the Native Hawaiians Study Commission enumerated in that resolution.

Senator **Matsunaga**. Thank you very much.

Our next witness is Mr. Charles Trembeth.

STATEMENT OF CHARLES TREMBETH

Mr. **Trembeth**. Senator Matsunaga, Representative Akaka, members of the congressional panel.

My name is Charles Trembeth. I'm from Koloa. Thank you for coming to Kauai. I commend you for coming to the people to hear their views.

Many Hawaiians won't be here today because some of them have to work.

Many won't testify because they might feel embarrassed in front of such an esteemed panel, or maybe they're afraid they wouldn't speak eloquently enough.

Some won't testify because they have given up. They can't see how they can be heard in Washington, when they can't be heard in Hawaii.

Many younger Hawaiians won't be here because they have tuned out things Hawaiian as being of the past.

I am not Hawaiian in the sense of 'i'o and koko (flesh and blood), but I am Hawaiian in the sense of being from this land, and this is my home. I understand the meaning of Aloha 'Aina.

I have studied the language. I have studied the history. I have studies the culture. I've studied the music.

I know about the establishment of the provisional government by citizens of the United States and the overthrow of the Hawaiian Government by landing armed military forces in breach of international law. I know about the Blount report and the declaration by President Cleveland before the Congress in December 1893, that the overthrow was illegal and that Hawaiian sovereignty should be restored.

All this, notwithstanding the original yielding of authority, under protest, by Queen Liliuokalani to avoid conflict and unnecessary loss of life "until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me and the authority I claim as the constitutional sovereign of the Hawaiian Islands."

I won't belabor the point. The United States and its representatives were involved in the overthrow of the Hawaiian kingdom, even if the President didn't order it or the Congress approve it. It was wrong. That wrong must now be corrected through resparations and restitution to restore: first, sovereignty; second, ancestral lands and water rights; third, free access to the shoreline and fishing grounds; and fourth, return of crown lands to the Hawaiian people.

Volume I of the Native Hawaiians Study Commission report talks about legal statutes and common law. Those laws were written by the very people involved in the overthrow—that is, the United States. Asking the United States if the United States did something wrong is like asking a thief if he took something. I would say the majority members of the Commission didn't do their homework, or their mind was already made up about any reparations before they looked at the evidence.

Volume II, the minority report, begins to address the realities of the situation, and provides the claims of conscience, as the title decribes, for the United States. The forward section of volume II sums it all up and tells it like it is. I commend Commissioners Kamali'i, Beamer, and Betts for their work on "Claims of Conscience." Without their work, the Native Hawaiians Study Commission would have been a wasted effort. I hope that you will study volume II very thoroughly and then I'm sure you will understand why reparations are owed to the Hawaiian people.

Volume I of the Commission report must be totally rejected and not be allowed to be used by the administration to extinguish Hawaiian native claims.

Thank you.

Senator MATSUNAGA. Thank you very much.

Our next witness is Ellie Kupau of HPACH. We'll be happy to hear from you.

STATEMENT OF ELLIE KUPAU

Ms. KUPAU. Thank you.

Honorable Senator Matsunaga, Congressman Akaka, members of your committee, aloha—and welcome back to Hawaii. And to all the people that present here from Kauai and elsewhere, good afternoon.

My name is Ella Mae Puaala [phonetic] Kupau. But I'm more known, better known, as just Ellie Kupau. I am a member of HPACH, which is the Hawaii Political Action Committee of Hawaii. I am also involved in the Congress of Hawaii People Counsel of Hawaiian Organizations, and I particiapte in many other organizations in public hearings.

One must smile, as one sees that the U.S. Committee on Energy and Natural Resources is the committee to hear the public testimony on native Hawaiian claims for reparations. I must inform the honorable committee that the Hawaiians have been pushed to the wall, exude a lot of energy from within. Just look at what Madam Pele can do.

Whether we are 100 percent Hawaiian, 50 percent Hawaiian, or just a small fraction of Hawaiian blood, we have the natural resources within us ready and able to combat the denial that an injustice was done in 1893. When I grew up, my father, the late Col. Arthur H. Kupau, told his children that the land, or " 'aina" as we commonly use that term today, was the most precious security that the Hawaiians can possess. Why? Because when one has a piece of land, one can build himself shelter, and that shelter can protect him from the elements of weather. It is also his protection from the invasion by intruders. Whether anyone has any amenities on the land, it really does not matter. For from the land, he can bring forth the fruits of his labor, such as sweet potato, taro, bananas, and other crops; and he can look to the sea for his fish and his lima. And from the raising of cattle and pigs, some chickens, some rabbits, perhaps then he can become not only independent, but self-sufficient as well. No one can take the land away from him. It belongs to him, in fee simple. He will live there. He will provide for his family there, and perhaps he will die there, also.

Should we sell, we ask our father. And his answer was, why would you want to sell? If you sell the land, spend your money, then you have nothing.

I am personally against any money paid for the taking of our land. How would the money be distributed? Who will receive it? What would the amount be? And will it be a fair and equitable price for what was suffered by our ancestors? Will the recipient be satisfied with what they get, or will they want more than their share? Much has been said in testimony given so far. If the general consensus is to reject volume I of the final report of the Native Hawaiians Study Commission, then, one must replace it with something else. Call it a balance. A negative report with a positive one. Although the basis for the conclusions reached by the six mainland Commissioners who made up the majority is not satisfactory to the people of Hawaii, then, what does that tell me? To begin today in the 20th century, 1984, to make sure that the history written today is by our own people, so that it can be accurate. If not, we are alive today to dispute any inaccuracies. Hawaiian people of today, write your own history, and let it be a legacy for tomorrow. Do it today, so that in the future, our children, and their children will not have to go through what we are going through today. So the facts will be there for the next generation to read and not dispute. For the truth will be written once and for all.

I support volume II, for it's common knowledge and facts. I support the hard working people who are trying to rectify the injustice by the overthrow of our Queen Liliuokalani in 1893. To those who oppose the idea of broadening the definition of native Hawaiian in Federal law, to include those with less percentage Hawaiian blood, I say to them: Although I am not 50-percent Hawaiian, my father was 75-percent Hawaiian. And his father and his grandfather more. But does that make me less a native Hawaiian? I believe not. We of the lesser amount look to the future for our children, and our children's children, to also share with them what was to go to them from their ancestors. I do not begrudge the 50 percent and over today, their right to be first. I just ask that they also be fair to those below, for we are the majority that is backing and helping to see that their share comes first. It is not in cash, but in the 'aina—the land itself. Aloha 'aina. So we can stay put and not wander like a nomad in our own land.

In my conclusion, I would like to thank the committee for the opportunity of coming from Oahu, which is raining, pouring down today, to come to the beautiful island of Kauai, have the Sun shine on all of our testimony today.

I testify in the name of my family. I testify that the right will prevail. I testify that justice will prevail, and our claims for fair play are the cries of all our ancestors and their spirit shall not rest in peace until the wrongs shall be righted.

Let our voices then be heard, and their sound ring throughout our State.

Thank you, sir, and Mahalo.

Senator MATSUNAGA. Our next witness is Emmaline White.

STATEMENT OF EMMALINE LAWE WHITE

Ms. WHITE. Good afternoon, Senator Matsunaga, and Representative Akaka, members of the committee, kamaainas and malahines, as well.

My name is Emmaline Lawe White. I'm half-Hawaiian, born and raised in the Hawaiian village of Anahola, and still living the cultural ways of our heritage.

To be here at this hearing today, I gave up the part of my heritage of fishing and seaweed picking, which I enjoy. That will be speaking on behalf of the Hawaiian people, and I ask that they be given some consideration in the reparations. Today, Good Friday, our recognized religious holiday, is a coincidence for a hearing for the Hawaiian people. Especially since Hawaii's life style and land system changes became a reality with the coming of the first missionaries. Revealing the historical events, the first treaty, December 25, 1826, safeguards American commerce in the Pacific. The constitution of the government of Hawaii where the land belonged to chiefs and the people in common. The Mahele of 1848 and many more treaties, to no avail. And then the overthrow of the sovereign government, an independent nation under the rulership of Queen Liliuokalani in 1893, followed by the annexation of the Hawaiian Islands.

It is in my regard that the sandalwood trading of Great Britain, France and the United States was a decisive factor as to who would first occupy the Hawaiian Islands. As early as 1826, the United States had introduced with its warships, the *Dolphin* and the *Peacock,* to render aid to American commerce—for Hawaii was an ideal trading center.

Nevertheless, who were the people that were in the provisional government? Were they not Americans? What is the difference of the Hawaiian Islands situation from that of Iran or El Salvador? The intervention of foreign governments into an independent nation, or someone else's country.

So in reality, the backbone of overthrow was really an undermining situation by the U.S. Government to protect commerce. For Hawaii was a valuable trading point.

And in conclusion, I would like to say, it is my understanding Panama was returned in 1977-78 under the able leadership of our former president, Jimmy Carter. It was returned to the Panamanians, after being under the rule of the French, the British, and then the Americans. It was returned to the Panamanians. I see no reason why the United States cannot return what is rightfully owned by the Hawaiian people.

Thank you.

Senator MATSUNAGA. Our next witness is Mr. John Sousa.

STATEMENT OF JOHN SOUSA

Mr. SOUSA. Mr. Chairman, my name is John Sousa. I'm proud to be here to represent Hawaiian people to the Congressmen of the United States.

I would like to ask you Congressmen what happened to the aloha bill? The bill says that all lands taken from the Queen in 1893 be given back plus compensation for the use of the land; since then, wasn't followed through.

There are lots of State leaseland. This land could be given to the people of the Hawaiian ancestry, because the land was taken away from the Queen in 1893. And it should be given back to the Hawaiian people.

I want to congratulate all you Congressmen to come here to listen to us. May God bless you.

Thank you.

Senator MATSUNAGA. Mahalo.

Our next witness is Vernon White of the Aloha Association.

STATEMENT OF VERNON K. WHITE, ALOHA ASSOCIATION, KAUAI BRANCH

Mr. WHITE. Aloha. Chairman Sparky Matsunaga and members of the committee, aloha—Congressman Dan Akaka.

I speak from the Aloha Association, Kauai branch. My name is Vernon K. White, and I am half-Hawaiian.

Today, April 20, 1984, is a very cloudy day here in Hawaii because again the hearing is at hand. In trying to hear testimony of people living in today's Hawaii, and not of the time of the overthrow of our Queen Liliuokalani. Many of our people have never read the book called, "Hawaii's Story." The autobiography is in chronicle from about the last days of our reigning Queen Liliuokalani. Maybe it was best that the Hawaiian people not read the story, because feelings would be reflected today. Many of us present today who have read the history of the overthrow of our Queen have tried to hold back emotional feelings to testify to the best of their or our knowledge, to promote the original complaint filed by the Aloha Association founded on June 16, 1973, and state our advice and support—that a wrong was done to the Hawaiian people.

Today, chairman of the Senate congressional committee, our own Sparky Matsunaga and our Dan Akaka and our own Dan Inouye seem interested and concerned; but the question on the value of our reparations—the Aloha Association is seeking, and the longtime study and presentation to the Congress, seems necessary, and to put off the Hawaiian people even though they were robbed of their land deprived as Hawaiians.

On February 10, 1976, Chairman Glenn of the Senate committee and Senator Bennett Johnson brought to Kauai, the U.S. Senate committee to hear testimonies from the people of Hawaii on Kauai, about the reparations bill; just as we are having today. However, today, we are divided by a fence between a Republican President who formed a committee on Native Hawaiian Study Commission, and three Democratic committee—three Democrats—Congressmen to hear about out testimony about our complaint.

Just think, 8 years from the last Senate hearing on our Island of Kauai, our own island. The last hearing held here on our complaint was by a Republican President reform committee on native Hawaiian commission study which gives us Hawaiians in fact no reparations for the overthrown of Queen Liliuokalani. Mind you, this committee was chosen and shot us down, just as they threw our Queen in jail. What are you, the committee looking for our testimony in broad language, that there was no Queen? That there was no Hawaiian people? And you would like to hear that a wrong was never done? Yet to met, it's a cloudy day when even many of our politicians tells the media that you, the Hawaiian people, do not have enough history. Historical records prove a wrong was done. I think you know, many studies were done on this subject matter, on the pros and cons was called to my attention. And we have met, the Aloha Association's members, to come before you this evening or this afternoon to present to you at the hearing, to support, in asking all these Congressmen and people of Hawaii to support us in our goals for the people of Hawaii.

That the Aloha Association complains to the United States for a wrongdoing against the Hawaiians was made, and therefore, I would like to leave with you our congressional panel, that it was the Government that took away the land, not as in many, many talks of the young Hawaiians, radical Hawaiians that the Queen's land was taken away by ministers or businessmen. But do you know, the land that younger Hawaiians are always using that, the haoles were taking away lands, but all the time they failed to recognize that the Government took the same land away. Therefore, in conclusion, the Aloha Association needs all the Hawaiian people's support to this claim that a wrong was done and that is our point today—reparations comes later, in good faith, or otherwise.

Thank you.

[The prepared statement of Mr. Kaluna follows:]

STATEMENT OF:
Kauai Chapter, ALOHA Association President
— Jeremiah Makaakoa Kaluna

Aloha! and Welcome to our beautiful Garden Island of Kauai!
Because I must go to Honolulu for my niece's Funeral, I am unable to appear before you as I had planned.
I have asked Vernon White, alternate ALOHA Director to make my presentation.

Our Hawaii Congressional Delegation has been working together with the ALOHA ASSOCIATION for over 13 years! We have expressed ourselves many times thru public hearings our feelings and knowledge of how our Sovereignty was taken from us, including our lands and right to govern ourselves, by the United States government's agents here in Hawaii. We believe that our rights to just compensation and redress is forthcoming from the U.S. Government.

Our ALOHA Story has touched and will affect every Hawaiian living today, including those that will be born later on. To deny us our just compensation is injustice of the greatest magnitude.

The questions that must be answered by you, our elected representatives to Congress, are many, such as:

Why is our Hawaiian Natives Claims Study taking so long? Why must our people be subjected to so many public hearings? Why cant you convince your colleagues in Congress that we deserve compensation?

Some of our people have passed away, is Congress waiting to have all ~~of~~ our eligible members pass on also!

Let the record again show, as in the 1977-79 Congressional Hearings in Hawaii, that the U.S. Government had a bona fide representative here in Hawaii who created and contributed to the overthrow of our country! We all are Americans who deserve the highest consideration.

Again, thanks for sharing your time with us here in Kauai. May the good Lord be with you as you weigh the results of these Hearings.

Me Kealoha Pumehana

Our Able President Arthur Kinney expresses his regrets for not being physically able to be here with you. He extends his warmest greetings and believes that Justice shall overcome Injustice!

Senator MATSUNAGA. Thank you very much.

Our next witness is the founder of the Aloha Association, Louise Rice.

STATEMENT OF LOUISE RICE

Ms. RICE. Senator Matsunaga, Representative Akaka, people of Hawaii, it is my please to come in here and meet with you personally. I speak in behalf of the 60,000 members of the Aloha Association here in Hawaii and the 50,000 in California, which is headed by Ray Evaliko.

On July 23, 1979, the State dissolved the Aloha Association, and you know about it. I was at the University of North Dakota. So without my knowledge I came back and reinstated and reorganized the Aloha Association. And we are a viable, credible association here in Hawaii.

Aloha was never meant to be only for Hawaii, however. It was organized as a national entity, to embrace California; Phoenix, AZ; Grand Forks, ND; Fairfax, VA; and Alaska. The inaction of Aloha is duly for lack of money, but I have been very active. As a matter of fact, I have been touch with Senator Matsunaga's office through his secretary for the last 5 to 6 years.

Right now, I feel like David who fought with the lion in the good book. But like David, all I have is my faith in the good Lord who revealed the whole thing to me without my asking for it. I feel humble about it, and if it was not a true history, I do not believe it would have been revealed.

And so, as the national president as well as founder, I speak to you, the committee, now. I ask and request that H.R. 1904 be returned back to the Halls of Congress. This is Aloha's original bill. But the bill I present to you today will be in a modified, updated form. And I request that H.R. 7217, creating this Study Commission, be repealed and done completely away with. It is not with a vindictive feeling that I ask of this. I do not recognize and I cannot accept the Study Commission, because we had already done our homework. We've already held our hearings. And while I see here, and the other islands, just spinning wheels. And I am sorry, I feel hurt, to see you people subjecting our people to more hearings. It is an insult, really to our intelligence.

I'm sorry to see Senator Inouye not here. I feel he's the one who sponsored, introduced the Study Commission. Aloha does not recognize OHA either. Not that we have any ill feelings about the, or against them. They are a State agency. Same as Hawaiian Homes Commission. We are a grassroots organization, where we embrace not only the high makamakas, but the little people. You spoke of experts who spoke at the hearings. I'm trying to summarize—I did write down a little bit. Where were they the last 73 years before a Aloha came forth? Really, where were they? Not one of them had come forth to support Aloha. The only one, in her official capacity, was Mary K. Robinson. She helped me, the round trip bill of study the picture of the lease land in Alaska. And it wasn't until he came that the people of Hawaii reconfirmed what I had said—that we had a legal, legitimate claim.

Before that, no one bothered to come forth. I will not, on behalf of Aloha, negotiate our position as clients and policymakers of this claim to OHA or to any other group or to you, the study commission. You literally are taking away our rights to the freedom of speech. Taking a look at it. We've only begun. We have already been in Congress. Yet you intercepted, you intervened, and interrupted our freedom of speech with our claim by bringing in the study commission.

And you yourselves know that you are in a position, you the Hawaiian there, you are a disgrace—I'm sorry to say this—to our people. You should be glad to do something for our people. They're doing it for their people; why can't you? Last June, in Congress, I actually saw the Japanese-American bill introduced in both Houses, not only one. Both, OK? You folks could have done that to our bill. You didn't. You put it only in one House at a time. So that our bill would never be passed. This is what I'm griping about today. I tried to make it to Hawaii and the other islands but I didn't have the money. But I had to come to Kauai because I didn't meet them before. I have nothing personal against any of you, even Senator Inouye. As a plain, ordinary person, I love the man. I have always loved him, and you too, but as a politician, and as a Congressman in a position to help us—hey, man, you are not doing nothing.

And so these people are pleading and crying. I sit back and say, why do this to us? I requested three on the agenda, on the House hearing in Washington, DC, May 3. And in the event that I can't make it we have Richmond Allen who used to be for Aloha. He agreed to represent Aloha at the House hearing. Right now I'm trying to generate enough money to take me to Washington and then back to Alaska. But my heart is right in there. And like I said, we're not going to negotiate or compromise our position as clients and policymakers.

The lady before me wanted to know who's going to do it? I have here a bill, a modified bill, which I want presented on behalf of Aloha. You have prevented me from reading to the people. It's not my fault that they don't know it, but I'll present this.

Senator Matsunaga. It will appear in the record, as though presented in full.

Ms. Rice. Before I close, may I read briefy—not all of it—the statement from Jed William Carlson, formerly of Grand Forks University of North Dakota.

As much as I would have liked to, it will be impossible to attend your congressional hearing in Hawaii. My name is Jed William Carlson, formerly of Grand Forks, North Dakota. I'm now a resident of the State of Alaska because of my employment. However, I am a 1983 graduate of the University of North Dakota with a degree in chemical engineering. Louisa Rice, founder and national president of the Aloha Association and also a full-time student of the University of North Dakota, established an Aloha chapter here at the university. Subsequently I became its first president. As I understand it, the big issue is the Hawaiians had the country taken away from them, their dominion; and they were never paid for it. As a further understanding, there are only two ways our government can apply any lands or any country. As this one case says, number one, conquering it or purchasing it. Well, they weren't conquered, and they weren't purchased, so somebody owes somebody. Furthermore, as I understand it, all treaties our government engaged in and the lawful means by which it is culminated and entered into, is by the consent and signing of this treaty by the Senate of the United States and the head of the country. However, as a further understanding, this treaty of annexation was coerced, forced, and entered into by haoles—Caucasians and missionaries' sons of American missionaries who never owned the Hawaiian Islands. And not a single Hawaiian ratified this treaty. The name of three who drew up, as I understand it, are Hatch, Thurston and Kenne. Diplomat John L. Stevens in Hawaii supported the actions of the three men, and ordered the landing of the marines on the shores of Honolulu. And the invasion and takeover and seizure of the Hawaiian Islands was made complete. This whole scenario was fully expected by Presidents Harrison and McKinley respectively, who knowingly—I repeat, who knowingly accepted the annexation treaty at the hands of those who didn't even own the country. As I further understand it, former President Grover Cleveland, outraged and shocked at what had happened, ordered the country be given back to Queen Liliuokalani and ordered Commissioner Blount to Hawaii to investigate the actions of diplomat Stevens. President Harrison was elected into office, and so this order by President Cleveland, as history records, was never carried out. President Cleveland—Harrison and Cleveland respectively, men of a different calibre and character, and did not have any qualms of taking the Islands under those conditions. In view of all this, documents in the Library of Congress and the federal archives, why, if I may ask, does the Study Commission Report say, and I quote, "no wrong was done by the U.S. Government." I anxiously await the results of your congressional hearings. Thanking you, I remain, respectfully submitted, Jed William Carlson.

I thank you.

Senator MATSUNAGA. Thank you very much, Louisa.

We'll now proceed to our next witness, Mr. Elvin Kaiakapu. Mr. Kaiakapu is also from the Aloha Association, as I understand it.

STATEMENT OF ELVIN KAIAKAPU

Mr. KAIAKAPU. Aloha Mr. Senator, U.S. House of Representatives Dan Akaka, and the Department of Natural Resources.

My name is Elvin Kaiakapu. I am a resident of Hawaii all my life.

The Native Hawaiian Study Commission which was set up to research an investigation has done more damage to the Hawaiian people by disregarding the truth that a wrong was done and that we are not entitled to a reparation.

We Hawaiians have been shamefully controlled by the U.S. Government all these years. There's no way we can pull ahead with this kind of handouts we have now. Hawaiians were at one time a self-governed and independent nation, until our country was illegally taken away by force. I totally disagree with the report and feel that the Hawaiian people deserve an apology. The report was misleading with false findings and I would be ashamed to be a part of it.

This meeting today is still another means of slowing down our cause. We have waited much too long for results.

There should be no doubt in your minds after today, that the Hawaiian people deserve what is rightfully theirs. We as Aloha members have worked long and hard for 13 years to get to this level.

We were never a threat to the United States, and yet we are still being punished for it.

In closing, in my feeling, Hawaii belongs to the Hawaiian people. Thank you.

Senator MATSUNAGA. Thank you very much, Elvin.

Our next witness is Roselle Bailey.

STATEMENT OF ROSELLE BAILEY

Ms. **Bailey**. Honorable Senator Matsunaga and Representative Akaka, members of the U.S. Senate Energy and Natural Resources Commission, and Na Pua O Ka Aina, Aloha.

I had a choice—this is in reference to Winona Beamer's testimony—I had a choice in my decision of education, and I chose to join the system of education that was available. But I had no choice in my education of my Hawaiianness. And that will explain my opening lines. I am today what I was yesterday and will be tomorrow. You are today what you were yesterday and will be tomorrow. Today we all have the opportunity to change our tomorrows.

We, the descendants of a people whose hearts were open and receptive to each new people and each new culture, welcomed each wave of immigrants upon our shores. Our people helped each wave to survive and live in their new environment. The hand of Aloha was extended and ever ready to enfold in love, trust and respect. Instead, we were greeted with the hand of treachery under the guise of righteousness, at the overthrow of the monarchy. We have suffered and are still suffering from this deceit.

Since my spoken and written testimony to the Native Hawaiians Study Commission is already on record, I am here to go on record in support of the minority report of the Native Hawaiians Study Commission and to urge Congress to adopt the second volume issued to the final report.

Do not delay any longer to right a wrong; give us our breath.

Aloha. Roselle Flora Keliihonipua Bailey.

Senator **Matsunaga**. Thank you very much.

Our next witness is Arthur DeFries. Arthur is not here.

Well, we'll go to the next witness while waiting for him. Our next witness is Darlene Gorospe. Darlene, are you here?

Then we'll go to Mrs. F. Frazier. Frances. We'll be happy to hear from you.

STATEMENT OF FRANCES FRAZIER

Mrs. **Frazier**. Thank you and greetings to you and to the Committee.

My name is Frances Frazier. I have a Hawaiian middle name which means fond recollection.

I have always been most particularly interested in Hawaiian lands, because I—late in life began to study the Hawaiian language and became the Hawaiian translator at the State archives. I was there from 1973 to 1976, then I wanted to come and live here on Kauai Nei, and so I retired from the archives. While I was there at the archives I translated the entire Native register which were the Hawaiian Land Claims made at the time, after the Great Mehele.

I have also translated many, many deeds—land conveyances which are on record at the bureau of conveyances. Within the framework of Western law, Hawaiian people who got their kuleana land and managed to somehow have it descend in their own bloodlines have as good a title to it today as they did when they first made their claim and got a royal patent or a land commission award rather, first, and then a royal patent. Those people, if it had been able to stay in the family, still have a valid title. But this is within the Western framework of law.

The many, many other people of Hawaiian descent who have nothing and who are in a state of want at this time, because of historical enents, I think, are entitled to considerations. And they should be given reparations. I agree with Dr. Levy that there is a fundamental fault in volume I in the assumption that is made as to the framework of law. This ought to be changed by Congress, and I hope that Congress will do this. And then if we can somehow pass through all the period of negotiations and arrangements that must take place, let us go on into the future and let's have a new Mahele for the Hawaiian people. Let them have their land. Let them have their birthright. There's enough land in this great state of Hawaii for everyone who has a Hawaiian birthright. And I say, give it to them, please. Thank you.

Senator **Matsunaga**. Mahalo to you. Our next witness is Gay M. H. White-Marchino.

STATEMENT OF GAY M.H. WHITE-MARCHINO

Ms. **White-Marchino**. Senator Matsunaga and Congressman Akaka, and committee, I present to you my written statement.

I am part-Hawaiian, 25 years of age and live in a Hawaiian village named Anahole, where the Hawaiian heritage is still culminated by its cultural ways of fishing, farming and ranching. In 1976, when I was a senior at 17 years of age, and the youngest I guess of the committee that stood before this same committee today, for the Hawaiian reparations, I testified my own values and beliefs toward this subject.

Eight years later, I'm still standing here, but at the age of 25. As a Hawaiian-American youngster and teacher finished with six years of college and in the act of completing my masters in education, I am here to testify my values and beliefs on Hawaii reparations bill. Looking back at the past, 1893, Queen Liliuokalani was overthrown. She was taken by force and put in prison. They not only imprisoned her but 400 that followed her, and her monarchy. The U.S. Government is still their own government for a small percentage of people that were not—I don't really want to get into it. I just going to briefly state what I have to say because a lot of people have stated what—the representation of the people of Hawaii were lost. The Hawaiians lost their identity. One of the statements that was reached was that the U.S. Government was not involved into the big business quote unquote with the big dollar sign. The U.S. Government do become involved due to the concern of our Hawaiian people who were caught in the middle of all this.

The U.S. Government could not say that they were defending an American cause because we had become a territory until 1959. Who were the provisional government? It is stated in the Monroe Doctrine that you cannot just go to a foreign land and take over. What about the Emancipation Proclamation—"all men should be created equal and no man is a slave." Are we Hawaiians not equal?

The overthrowing of the Queen in 1893 was the wrong done and an injustice. The people were lost and confused. The great leader was overthrown. There was no leadership, no one to turn to. The Hawaiians lost their identity.

So I strongly feel that the Hawaiians should get compensated for their land. Look at the problems that we Hawaiians are faced with today. Crime, education, birth rate, birth defect, misrepresentation within the government, et cetera. How do we account for the injustice that was done? The Hawaiian people are a proud people, but they are also a dying race faced with many factors that misrepresent us due to the historical events that affect our culture and its people in today's world.

Looking at the utopian few, if we did pass the Hawaiian reparations bill, the money could be used to help educational and cultural purposes. And land could be used for homes, for our Hawaiian people.

Last of all, we want land to build corporations so that Hawaiians "have something to look forward to in the future."

Thank you.

Senator **Matsunaga**. Thank you very much, Gay.

It's nice to know that since 13 years of age, you have been fighting for your rights and you, still at age 25, continue to do so, because the fight is, believe me, one which must yet be continued. And I'll speak to that later, if we have time.

Our next witness is Hartwell Blake. Hartwell and I were classmates from Koloa school days—Koloa Grammar School. Good to see you.

STATEMENT OF HARTWELL BLAKE

Mr. **Blake**. I am H. Kalawanalani Blake. I'm 50 percent Hawaiian and, Sparky, greetings, and Danny, greetings, as well as the rest of the staff members.

As I sit here, listening to the testimony, I certainly appreciated the facts that was given by people who really researched this thing, and who know what they're talking about. And I think the job done was tremendous. About 90 percent of the testimony today should go on the record. And it should help on volume II.

It's true that 90 percent of volume I is right, but that 10 percent is the one that hurts. I would like—you especially, Senator Matsunaga, to remember some of these things. This is the inequality of public justice, when Jonah—Prince Jonah Kuhio was delegate to Congress, started the Hawaiian Homes Act, he did not speak of a blood quantum. And I think the American Government showed that he finally conceded to the one-thirty second, and that gradually moved up to 50 percent, and probably he had to go along with it.

Another—Kamehameha Schools, I believe it was 1933, something came up about blood quantum—I did not know, what the Hawaiian Homes Commission was all about. There was some talk about it, said Hawaiians didn't want it. However, as time went on, I finished school, finished college, got my graduate degree and everything else, from Penn State, the University of Hawaii. I was a provisional agricultural instructor. And about the late 1940's or 1950's, they talked about opening 300 acres in Waianae. And I thought this would be a good place to go. I didn't want to leave Kauai. Kauai's a nice place to go, and I thought it would be a good place to raise, later, my children. I always loved horses and cattle, and I hope a degree in horticulture, animal husbandry and I thought it would be a great, a tremendous help to other Hawaiians who would want to get something there.

Well, in speaking to the boss in the Hawaiian Homes Commission, he said Hartwell, you have the best qualifications; I said fine; I said, I can apply for that job at the school and go ahead with this traditional land work at the same time, open up that 300 acres. Then he says, by the way, are you married? I say, yes; I am. He says, what ethnic combination your wife? I said, pure Chinese. He put his head down. And I said, what's wrong? He said, well, he says, you know, should you pass away, your wife will get nothing. I said, what if I invest a hundred thousand dollars in that place, what will she get? Nothing.

Now that's still the thing today. And I think this is a wrong that happened a long time ago and it hasn't been corrected. And I know that the lawmakers in all parties have been party to this, and time and time again, and this is the first time a state convention, the biggest Hawaiian organization of Hawaiian Civic Clubs in Kona, took a stand on blood quantum. I was the chairman of the political action committee, and this is the first time that they spoke up to discuss this matter. I think it was tremendous.

Another thing was, there was one campaign I was on in Kailua. And that Hawaiian gentleman, about in his sixties, and two fellows in their twenties and thirties. And I asked them if they were voting. And the Hawaiian gentleman told me in Hawaiian—in English—waste time? I said, why? He said, they don't listen to us; they don't do anything for us. He said, I'm not going to vote. And I talked to the other two, and finally, I think I convinced the young one, but I heard later that the two of them did vote in Kona. But they didn't vote in the other election.

This is something that the Hawaiians have been pushed down, and they feel dejected, and feel they haven't got a chance. And this is what Sparky and Dan, I'd like you two to go back and remember these little things, because you do have the facts. You have all the facts that an injustice was done, and it should be rectified. And I trust that you gentlemen can convince the committee, first of all, Senator Matsunaga, on volume 2, and then when that gets through, Danny, you can carry the ball in the House. You know, this thing has to be settled one of these days, and I don't agree with what was said earlier. The State legislature wants to move the thing from 50 to 25 percent—forget it. If we're going to do it, go all the way. Let's not compromise. Take 9 years to compromise and another 9 years to compromise on 25 to zero. If we want to take it down, take it down now, because otherwise the Hawaiians will be a dying race. And the young ones that are coming on board—they are many, and they should be given their equal rights to the Hawaiian lands.

Now, there's a tremendous amount of lands can be used, and all of these things could be rectified, right now in the State of Hawaii with OHA. And the ceded lands, we're having trouble—and yet it was read when we became a State that the State legislature must realize the fact that all of these lands ceded were turned back to the State of Hawaii. And the 20-percent factor and 80 percent—not only Hawaiians would benefit from the ceded lands. The entire State would benefit from it. Somebody was talking to me about over the past, the 1978 Constitutional Convention, and this proposal presented the State and the public that voted in 1980 that all trails to the mountains and to the ocean will be reopened. The State legislature has not taken this to task yet. There are many of these things that should be done that we are toying with, and I'm for—I ask your kokua on this matter to support these issues.

You both of you, God bless you, Mahalo Nui Loa.

Senator MATSUNAGA. Thank you very much, Hartwell.

Our next witness is Bill Asing.

STATEMENT OF BILL KAIPO ASING

Mr. ASING. Thank you, Hon. Senator Matsunaga and Hon. Congressman Akaka.

For the record, my name is Bill Kaipo Asing, and at the present time I'm serving my second term on the Kauai County Council. The Kauai County Council passed a resolution which was brought to this hearing by the council chairman.

I'm here today to testify as an individual, on behalf of my family and myself.

I've spent much time going through both volumes in trying to find out what is in here, in its full contents. It has been very difficult for me to understand the varying degrees of differences between both volumes, and I agree with most of the previous speakers, and it appears as though probably 90 percent of the statements and findings in volume I is true. I do agree wholeheartedly and support volume II. The only area that I'd like to address today is the area of—not legal and lawful practices that has taken place on that infamous day in 1893.

I think what is taking place is—do we have to make our law for everything? Is it necessary? I think that the Congress has a moral obligation, a moral obligation to people for something that was done that is wrong. And I think that that is probably the most important thing.

Let me give you an example. Supposing the honorable Senator stood up from his chair, walked down, and his wallet fell on the chair. Someone went by, picked it up after he left. Supposing there was no law to cover this area, then we had the Congress here and these people judging the individual who picked that up. Is it wrong? But there is no law that covers that area exactly. So these people, Congress, will look at that and say, there is no law specifically covering that area, so Senator, I'm sorry, but you don't get your wallet back, you don't get anything. I think that is probably the most important thing. And I'd like for the Senator and Representative Akaka to take this back to Congress. Use your influence. It is very difficult for me to understand that the Indian problem has been taken care of, that the Alaskan problem has been taken care of, that payments to Colombia for Panama has been taken care of, that Japanese-American internment problem has been taken care of to a degree. And I look at this and say, there is very little question that that is wrong.

But to just say, legally, I think is wrong. I think there is moral obligation by Congress to the people of Hawaii, and I hope that you take this back and take care of this wrongdoing and right it.

Thank you very much.

Senator **Matsunaga**. Thank you very much.

Is Mr. Arthur DeFries back? Is he still desirous of testifying? What about Darlene Gorospe? Darlene is not here. Well, if not, while we're waiting for Mr. DeFries—oh, here he is. Arthur, we'd be happy to hear from you.

STATEMENT OF ARTHUR K. DeFRIES, JR.

Mr. **DeFries**. Senator Sparky Matsunaga, this is kind of like a format—before I get into some of the things I want to talk about, I just would like to—it's a personal thing.

First of all, for the record, my name is Arthur Alimaana (phonetic) DeFries, Jr. I'm a resident of Anahola. My post office box is 42, Anahola, HI 96703.

I live on Hawaiian homestead land, and I'm 93 percent Hawaiian. And again, I'm very proud to live on lands that were set aside by Prince Kuhio in Anahola. At this time I really would like to call on Velma Kekipi, to say just a little prayer.

Ms. **Kekipi**. What I'd like to say is I waive my time because I know time is of the essence and he asked me to assist so, I already have my testimony on file; I have some more that I will submit; and that will be coming within 2 weeks. OK?

Senator **Matsunaga**. Fine.

Ms. **Kekipi**. So, what he's asked me to do is present this lei to you—these are very special leis—the flowers were picked, he said, 7 feet from the place where Prince Kuhio was born, and he would like you to have this. See, it completes the color—red is for Hawaii, and you're at the extreme end, Kauai, so—and this is to you also from Mr. DeFries, they picked the flowers especially because of where it came from. And he has a prayer that he's asked me to read because he says it's so important and emotional, he would not be able to complete it.

> Our Father in heaven, Creator of the energy of this entire universe, we come before you this afternoon with gratefulness in our hearts for all the good things you have given us. Help us to understand one another, to love each other, and to share our feelings to one another. May your love and presence be with us today. We know you are the power and grace forever. Amen.

Senator **Matsunaga**. Amen.

Mr. **DeFries**. For the record, I have been very involved with children of all different ages. And again, what I really want to share is that, Senator, I have a letter that was printed in the Garden Island way back in 1969. And then, on record, what it is that the person at this time, they didn't have the courtesy enough to put his name down. And then again, I know as far as Senators you folks—if you would like to speak in this part—because this, when I was with the Hawaiians, the very next day this guy, a good friend of yours, Eddie DeMello (phonetic) gave me this book. And at that time, I was an organizer for the island over here. This is why I'm aware, to ask—and this is my favorite hat—it's all over. So what I did is that, as far as for my employment now, when the unions need my help I'm 108 percent in the back of it. And again, this hat here—the person, I love you very much, is gone away. And this is the Hawaii Laborers Union. Again, this is Samson. I am a laborer, and again, is that I want this hat, is yours. OK?

Dan Akaka, this hat is yours. OK? So again, Akaka, I wanted you to use that hat with lot of pride in it. Because the hat is Kauaian. I'm like your person who lost a good man. When I get Federal problems negotiated with the Senate office, we talk story, close the door. You got one good man, Phil Kapian (phonetic). For you Senator, as far as your kahuna and I, we're very, close. And I say this, very humbly, you remember a name, DeFries—looking for a lady by the name of Edith DeFries in France?

Senator MATSUNAGA. Yes.

Mr. DEFRIES.I appreciate it.

So again, Senator, if you will just read this, because I'm mad like hell with the Garden Island. And I had a little talk with—this was many years ago—could you read it for me, please, Senator? Just the last.

Senator MATSUNAGA. You want me to read this into the record?

Mr. DEFRIES. Yes. For the record, just the last paragraph, for the record.

Senator MATSUNAGA [reading]:

> Aloha I.L.W.U. Aloha I.L.W.U. Headquarters, Lihue, Kauai, the land that the industries lease from H.H.C. is used towards the economy of the community Kauai. Also, most of the industries' employees are your members, and they are working on these lands. Please inform the organizer, Arthur DeFries, of the above statements. Now, send Arthur DeFries into the plantation housing to see what the I.L.W.U. can do to help your members whose camp housing is being closed down, and are being forced to relocate. Don't let the plantations close down their camp housing. Have the plantation repair them so that the employees can have a place to stay until they have accumulated enough money to purchase a home of their own. What? You say bur [sic]? Because if you had all the land back and no more Kala, how you going build house? What you gain? Nothing. One more auwe."

That's it.

Mr. DEFRIES. This is from me to you from Eddie DeMello. He passed away. This what he shared with me. Now, this is what we talk about. This what the Ceded Lands—look it here. If you get a chance, Senator, go to the I.L.W.U. Library. I spend many times in that library. Anytime when I go to Honolulu, Senator, Eddie DeMello puts me up. It's the only sad part of life, I got to go the bar away—when we go to wherever we're going, afterwards he brings me back. Then we got to go in a bar again. But again, he says, Eddie is a fantastic man. I have learned a hell of a lot from that man. And again, I share this with you. This you see here, is from the Great Mahele. OK? This is Kauai.

Now, Prince Kuhio was supposed to have been born at Kukui'ula.

Senator MATSUNAGA. That's where I was born.

Mr. DEFRIES. How far away from Kuiku you stay?

Senator MATSUNAGA. That's—I was born within 1 mile where Price Kuhio was born.

Mr. DEFRIES. So that would be—I can make it in seven throws. And I think we should get a monument for you. Why I say that? Why I say that?

Senator MATSUNAGA. I'd like to let the monument wait a long, long time.

Mr. **DeFries**. We're not supposed to make one monument for people that are dead. Make one monument when the person is alive. So really want to get me that. You see, it's—you know, where that thing Iwa came, praise the Lord, it was a blessing for me. Because I'm with legal aid for many years, I don't know, I'd see my friend Francis Kawauhane [phonetic]—I hope he's still around. He went to that. But again is that, what I'm really trying to say, is that this guy that's supposed to own the property down at Prince Kuhio Park, is—the last part of the name was Iwa; and again is that, what I'm really trying to say is that, Prince Kuhio was born there, and then again, I'm really glad that, I think 1 mile I throw seven throws.

You know, but I mean is that, what I'm really trying to say is this, you see these yellows, and you see the black, eh? It's Hawaiian history, you get the government land, and you get the crown lands—you know the black ones? You try go kuku, especially on Kauai and the—Molokai. And the yellow ones.

When you go to the historical sites, you believe in three different things. The aumakua, the akua, and the one inside. You can feel vibration. You can feel them, especially in these areas here. And these are the areas that again—is what I'm really trying to say is that walk through these places. My mother was born and raised in Waimea Valley. And my ancestors are very heavy. Starts from Anahola and goes all the way on the trial, you keep on going. And also, where he was raised in Hanapepe.

So what I'm really trying to say is that—and the other green land that you see over here, this is where we are now. And again, it's that in Hawaiian history, this was supposed to have been the sister of the No. 4 and No. 5 king, this green one.

And this red one over here, is all Kekauanoa's [phonetic] land, which is family to me. OK?

So like inside June 10 and 11, we have one thing down at Waimanalo, we have Ahewa, which is family to me. OK?

But again, is that—what I'm really trying to say that here is like the whole point across. You see this blue land over here. This blue land over here is down Aiea, and it was supposed to have been for Kunia, and in Hawaiian history, you get Bishop Estate—you see the pink land over here. This is Numaai [phonetic]. You don't see too much pinks, eh? Because Kauai, they only get two places in pinks.

But what I mean is that, this is Kunia's land. This is the momma's land, over here. But when the papa went walk inside there where the blue stay, something went choke his neck, they say. But again, is that, he don't like the land, so the people revert back to yellow over there.

But again is that, when you been in politics for a long time, and established family over there, and many of the ones, especially inside where the lua and all different places, and old politicians, especially in the black and the yellow, brown lands. But again is that, when this thing, the whole thing, when annexation, 1898 was, that would be two forty five.

An I wrong—that man over there—fantastic man. But again is that, when the king came back from the United States from the seaward part, how many millions of acres came back. Is that one point six, eh?

But what happened to the 900,000, I'm glad that I'm part of the 200,000 acre which Prince Kuhio had a big decision at that time. And again, I know I'm spending a lot of time on this, but I just wanted to get away from that, and there's some other organizations that I have helped, and I love this one here.

This is also another very, very favorite hat. This one here. But again, is that, what I'm really trying to say, we had the volunteers for OHA. This one I give to you, and they're on the whole network of Kauai, and then also I like give this to the Senator, this pertaining from J.C.'s—Senator, just look at the numbers at that time when OHA went just start, if you could the people a general idea. Of if you want to read it real fast, like.

Senator **Matsunaga**. We'll submit this to——

Mr. **DeFries**. No, especially important the numbers. Just the numbers. If you can.

Senator **Matsunaga**. The number of Hawaiians. Honolulu, 4,000. Hawaii, 2,314. Maui, 1,653. Kauai, 587.

Mr. **DeFries**. Right, so this is why we helped to start the—with Steve Puna, Princess Kaiulani, and many other different people. But again is that, Senator, I'm really here for this, this two volume. What volume is this?

Senator **Matsunaga**. That's volume II.

Mr. **DeFries**. What volume is this?

Senator **Matsunaga**. That's volume I.

Mr. **DeFries**. I don't like this one. Don't like this one. What volume is this?

Senator **Matsunaga**. I hope you're not putting me——

Mr. **DeFries**. I know——

Senator **Matsunaga** [continuing]. On a——

Mr. **DeFries** [continuing]. I'm not putting you on the spot.

Senator **Matsunaga** [continuing]. On a quiz show.

Mr. **DeFries**. No, now this is volume I, all right, or volume II?

Senator **Matsunaga**. Volume II.

Mr. **DeFries**. I like volume II.

Senator **Matsunaga**. Good.

Mr. **DeFries**. And I want to ask you, Senator. I want to get resolutions from all the unions and hoping that they go with volume II. I'm going to start with Salvi (phonetic) first, and then I'm going to start with Bobby Trask (phonetic) next, and then I'm going to start with all the other different ones. Can I have that OK from you?

Senator **Matsunaga**. Well, I would heartily endorse your efforts, because thats the only way we're going to get a bill passed after we introduce it, and I do intend to introduce a bill to implement the recommendations——

Mr. **DeFries**. Senator, you will get two leis.

Senator **Matsunaga** [continuing]. In volume No. 2, and the only——

Mr. **DeFries**. You will get two leis.

Senator **Matsunaga** [continuing]. The only way we're going to pass it is to get the full support not only of people in Hawaii but people throughout the United States. So that wherever you can get unions and associations of any kind to support the bill which will be introduced to implement volume II, that's the only way we're going to pass it. So you may as well start right now.

Mr. **DeFries**. Prince Kuhio—Senator, I'm just about ending, I'm sorry that I threw that volume I on the floor, we'll pick it up right now. I would like to walk over and give you this for a souvenir.

Senator **Matsunaga**. Thank you very much.

Mr. **DeFries**. I would like to at this time call Velma.

Senator **Matsunaga**. We'll accept this for the files. Are you finished with your testimony?

Mr. **DeFries**. I was going to sing you one song, Senator, for everybcdy else here.

Senator **Matsunaga**. All right, then, well—you are the last witness, so we'll close with your singing, then.

We'll hear from Mr. Lemm.

Mr. **Lemm**. I crossed my name out, because I thought——

Senator **Matsunaga**. We have to leave in 5 minutes.

STATEMENT OF BILL LEMM

Mr. **Lemm**. Yes; I realize that.

Mine is a traditional family history, and it involved the arrest of Queen Liliuokalani. I am a descendant from the action of Waipapaka (phonetic) who was a captain of the Honolulu City Police who took Queen Liliuokalani into custody. He took the Queen into custody because he had information that an assassination plot by Stafford, Dole, and his cohorts, against the Queen.

When he did take her into custody and went to the palace, Stafford, Dole—and he told my uncle's father, grandpa, to take Queen Liliuokalani to the prison or the dungeons. Police request to Dole and his cohorts at that time was that the Queen would be imprisoned in her own palace. Dole granted that. After the period of imprisonment, she went to Washington and requested audience with the President of the United States, to get back her monarchy. Their attempts were fruitless, and she returned to Hawaii; she would always visit my uncle's father's people, at his beach home. She would say to him, Aloha, Waipa. If not for you, I make (dead).

And I'd just like to say, if the U.S. Government was part of this plot to overtake the islands, then the criminal actions by the United States must be acknowledged, and that the Hawaiians today want, and I hope, through your committee, get on the road to recovery.

Thank you very much.

Senator **Matsunaga**. Thank you, Bill. Thank you very much.

Mr. **Vina**. Excuse me, I'm Aloha Vina.

Senator **Matsunaga**. Do you wish to testify?

Mr. **Vina**. Yes, I told the lady in the back already.

Senator **Matsunaga**. Well, we don't have you on the list, but—could you do it in 2 minutes?

STATEMENT OF ALOHA VINA

Mr. **Vina**. Yes. OK.

I would just like to read something that the children—very famous are the children of Hawaii. And when the evil haole messengers come with their greedy documents of extortion, we will never sign those papers. Hawaii, the land of Keawe answers. No one will fix a signature to the paper of the enemy with its sins of annexation and stolen sovereignty and the sale of all our native civil rights. We do not value the government's sum of money. And we are satisfied with our pohakas, our stones, which are the astonishing food of our Aina and Aloha, the land. We go back, Liliuokalani, who has won the rights of the land. And we will always tell this story; I would like to tell Congress—and you, Akaka, and Senator Matsunaga—of the people and the loss of the land. We have two things that the children of Kauai on Anahola Hawaiian Homes, from the Protect Kahoolawe which is made on Kahoolawe and from Kauai Hoaokano (phonetic) which supports the Native Hawaiian Land Trust Task Force, and these are two pohakes that we made with the help of the children, which we would like to give one to you, Mr. Matsunaga, and one to you, Mr. Akaka, and we have one for Mr. Inouye, which I'm very sorry he left. We didn't know he was going to leave. But you have to do right now. So on behalf of the children, let me give you these two pohakes. And they should speak the story, it is our documentation, which you can pass to Congress. And you need help, it's our aina, hold it. So when you talk of our land, you will have it in your hands, for all that you can do.

Senator MATSUNAGA. Thank you, Mahalo Nui Loa.

Mr. AKAKA. Mahalo.

Senator MATSUNAGA. Well, I'm afraid that we're going to have to leave now. We have a plane to catch to a point in Honolulu. But, before I go, I want to thank you all for coming, for listening patiently—those who have not testified; for those who have testified, I thank you for adding to the record. And just so that there won't be any misunderstanding, the reason for holding these hearings is that we've got to have evidence to support the position in volume II, because the Commission came forth with a strong majority report disclaiming any responsibility on the part of the U.S. Government. And also, and there is a definite misunderstanding from several witnesses who have testified, not only here today, but on Maui, Kona, and even in Honolulu, that the Japanese-American Reparations Act has passed. No, it has not passed. The study commission in that case, made a study for 1½ years, and made a unanimous report supporting the claims of the Japanese-Americans. That makes a lot of difference. So with that kind of report, we were able to introduce a bill to implement the recommendations of the Commission, as soon as the Commission's report was submitted to the Congress.

On the other hand, in the case of the Native Hawaiians claims commission, the report was adverse, so if we were to introduce a bill based on the majority report, volume I, what happens? The Congress has no alternative but reject it.

So what we're going to do is build up a record in support of volume II, so that we can go not only to the committee members but to the full Senate and the full House and say, well, we have evidence to show that volume I has no basis in fact. History repudiates its findings. We support volume II with these facts. And the fact that we have been gathering through testimonies in Honolulu, Kona, Maui and here, we can do that—we'll go forward. I assure that before this Congress is over, we will have introduced a bill to implement the recommendations of volume II. But this is only the beginning.

When you consider that the first Reparations Act for Native Hawaiians was introduced only 10 years ago, 1974, just think about the bill which I introduced 21 years ago to establish the U.S. Academy of Peace. It's still pending in the Senate. Everybody loves peace. You talk about peace—I'm for peace; I'm for peace; sure. But you say, let's do something about peace. Let's support a U.S. Academy of Peace. Oh, not me; not me; not me. When I first introduced a bill I found five cosponsors out of the 535—534, not including myself. And then when I in turn went to the Senate, I could get only two cosponsors—Senator Hatfield and Senator Jennings Randolph of West Virginia. Just 2, out of the 100. When we created a study commission for the Peace Academy we held hearings throughout the United States over a period of 1 year. I happened to chair that commission. And after the commission filed a unanimous report, only about one reservation of nine commissioners. When I introduced the bill again, I had 57 cosponsors. That's more than enough to pass the bill; all you need is 50 in the Senate. So here again, I say—we'll catch them in the long run. And in parting, before I pound the gavel, I want to thank you people of Kauai, my native land here, my native island. When I was ill in the hospital, so many of you sent me such beautiful messages. You were all praying for me. Your prayers were answered. I concluded that anybody can suffer a heart attack. And I had a heart attack. But with your prayers and believe you me, my hospital room at naval hospital was virtually converted into a flower garden, the flowers that came from Hawaii, and the doctors and nurses all came to see the flowers in my room.

And they said, I never saw such beautiful flowers in such quantity. And my friends not only visited me—Sparky, you got to stop to smell the flowers—they even bent the flowers for me to smell. So I want to thank you.

So then, and believe you me, I want to leave one word, because of something that was wrong here that your Congressman Akaka, the only Native Hawaiian in the Congress, is the most beloved Member of Congress bar none. I'm the—I won't say I'm No. 2, but I'm maybe No. 2 to him. When I asked Tip O'Neill, the Speaker of the House, I said, well, how is my friend Dan Akaka doing. And he said, Danny, well, you know, Sparky, everybody loves the guy. And I'm quoting him now. Everybody loves the guy. And you know, when you love a guy, and he asks you to do something, you can't say no. That's how effective Danny Akaka is. And because of him, there's several laws today that include in the meaning of Native American, Native Hawaiian. So, don't believe what some people tell you about Danny Akaka. He's doing a great job in Congress.

The hearing is closed, subject to the call of the Chair.

[Whereupon, the hearing was adjourned.]

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